

**In The Matter Of:**  
*City of Detroit*

---

*Robert C. Walter*  
*July 11, 2014*

---



**Bingham Farms/Southfield • Grand Rapids**  
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw

*Original File WALTER\_ROBERT C..txt*  
*Min-U-Script® with Word Index*

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION</p> <p>In re: ) Case No. 13-53845 CITY OF DETROIT, MICHIGAN )  ) Chapter 9 Debtor )  ) Hon. Steven W. Rhodes</p> <p>The Deposition of ROBERT C. WALTER, Taken at 150 W. Jefferson, Suite 2500, Detroit, Michigan, Commencing at 10:27 a.m., Friday, July 11, 2014, Before Melinda S. Moore, CSR-2258.</p>	<p style="text-align: right;">Page 3</p> <p>1 ALBERT B. ADDIS (P31084) 2 KEITH C. JABLONSKI (P62111) 3 THOMAS D. ESORDI (P45428) 4 O'Reilly Rancilio PC 5 12900 Hall Road 6 Suite 350 7 Sterling Heights, Michigan, 48313 8 586.726.1000 9 aaddis@orlaw.com 10 kjablonski@orlaw.com 11 sesordi@orlaw.com 12 Appearing on behalf of the Macomb Interceptor 13 Drain Drainage District. 14 15 W. MACK FAISON 16 M. MISBAH SHAHID (P73450) 17 Miller Canfield Paddock &amp; Stone, PLC 18 150 W. Jefferson Avenue 19 Suite 2500 20 Detroit, Michigan 48226 21 313.963.6420 22 faison@millercanfield.com 23 shahid@millercanfield.com 24 Appearing on behalf of the City of 25 Detroit and the Witness.</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 RAECHEL M. BADALAMENTI (P64361) 4 SCOTT SIERZENGA (P77633) 5 Kirk, Huth, Lange &amp; Badalamenti, PLC 6 19500 Hall Road 7 Suite 100 8 Clinton Township, Michigan 48038 9 586.412.4900 10 rbadalamenti@khlblaw.com 11 ssierzenega@khlblaw.com 12 Appearing on behalf of the Macomb Interceptor 13 Drain Drainage District. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 ARTHUR H. RUEGGER 2 JOSEPH SELBY 3 Salans FMC SNR Denton 4 1221 Avenue of the Americas 5 New York, New York 10020 6 212.768.6881 7 arthur.ruegger@dentons.com 8 joseph.selby@dentons.com 9 Appearing on behalf of the 10 Official Committee of Retirees 11 of the City of Detroit. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 5</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 ROBERT C. WALTER</p> <p>5 EXAMINATION BY MS. BADALAMENTI 6</p> <p>6</p> <p>7 EXHIBIT PAGE</p> <p>8 (Exhibits attached to transcript.)</p> <p>9</p> <p>10 DEPOSITION EXHIBIT 1 23</p> <p>11 DEPOSITION EXHIBIT 2 25</p> <p>12 DEPOSITION EXHIBIT 3 35</p> <p>13 DEPOSITION EXHIBIT 4 39</p> <p>14 DEPOSITION EXHIBIT 5 76</p> <p>15 DEPOSITION EXHIBIT 6 79</p> <p>16 DEPOSITION EXHIBIT 7 97</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. -- so the court reporter can get down what we're</p> <p>2 saying.</p> <p>3 Are you currently employed?</p> <p>4 <b>A. No. I'm retired.</b></p> <p>5 Q. When did you retire?</p> <p>6 <b>A. March of 2012.</b></p> <p>7 Q. Where did you retire from?</p> <p>8 <b>A. City of Detroit Law Department.</b></p> <p>9 Q. What was your position?</p> <p>10 <b>A. Senior assistant corporation counsel.</b></p> <p>11 Q. Who was above you in the Law Department?</p> <p>12 <b>A. At that time, my supervisor was Judith Turner and</b></p> <p>13 <b>then the director and -- was Krystal Crittendon,</b></p> <p>14 <b>and the deputy director was Edward Keelean.</b></p> <p>15 Q. The highest ranking person in that department was</p> <p>16 Ed Keelean?</p> <p>17 <b>A. No, he was the deputy director. Krystal</b></p> <p>18 <b>Crittendon was the director.</b></p> <p>19 Q. What would your day-to-day duties have been as an</p> <p>20 assistant -- senior assistant corporation</p> <p>21 counsel?</p> <p>22 <b>A. I was assigned to represent the Detroit Water and</b></p> <p>23 <b>Sewerage Department, and basically general counsel</b></p> <p>24 <b>work for whatever they wanted me to do. I didn't</b></p> <p>25 <b>do litigation. I wrote and reviewed contracts,</b></p>
<p style="text-align: right;">Page 6</p> <p>1 Detroit, Michigan</p> <p>2 Friday, July 11, 2014</p> <p>3 10:27 a.m.</p> <p>4 (Mr. Sierzenga not present at</p> <p>5 10:27 a.m.)</p> <p>6 ROBERT C. WALTER,</p> <p>7 was thereupon called as a witness herein, and</p> <p>8 after having first been duly sworn to testify to</p> <p>9 the truth, the whole truth and nothing but the</p> <p>10 truth, was examined and testified as follows:</p> <p>11 <b>EXAMINATION</b></p> <p>12 <b>BY MS. BADALAMENTI:</b></p> <p>13 Q. Sir, can you tell us your name for the record.</p> <p>14 <b>A. Robert Charles Walter.</b></p> <p>15 Q. And, Mr. Walter, you're an attorney?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. So you understand the deposition process?</p> <p>18 <b>A. I do.</b></p> <p>19 Q. I have a tendency of getting a little ahead of</p> <p>20 myself. If I cut you off before you're finished</p> <p>21 answering a question, let me know that I'll back</p> <p>22 up. And the same thing, even if you can</p> <p>23 anticipate my question, make sure you wait and</p> <p>24 let me finish it --</p> <p>25 <b>A. Okay.</b></p>	<p style="text-align: right;">Page 8</p> <p>1 <b>negotiated contracts, advised the department on</b></p> <p>2 <b>any legal issues that they wanted advice on.</b></p> <p>3 Q. Advise the DWSD?</p> <p>4 <b>A. Yes, that was -- I did some work for the Public</b></p> <p>5 <b>Lighting Department, but mostly DWSD.</b></p> <p>6 Q. When did you take the position of senior</p> <p>7 assistant corporation counsel?</p> <p>8 <b>A. I got promoted in the mid-90s -- '95 or '96.</b></p> <p>9 Q. And were you always in that position assigned to</p> <p>10 the DWSD?</p> <p>11 <b>A. I was assigned to DWSD from the time I started at</b></p> <p>12 <b>the Law Department in 1982 until I retired.</b></p> <p>13 Q. With respect to any criminal investigations or</p> <p>14 outside agencies investigating the DWSD, would</p> <p>15 that have been something that you would become</p> <p>16 involved with?</p> <p>17 <b>A. No. I was not involved in that.</b></p> <p>18 Q. What -- who would have been involved?</p> <p>19 <b>A. Someone higher than me. There were two federal</b></p> <p>20 <b>investigations of the department while I worked</b></p> <p>21 <b>there, when I just started there, in 1982, when</b></p> <p>22 <b>the director of the department, Charles Beckham</b></p> <p>23 <b>was indicted and subsequently convicted. And that</b></p> <p>24 <b>was handled by my supervisor, Darryl Alexander,</b></p> <p>25 <b>and they add lawyer from Dykema -- a criminal</b></p>

Page 9

Page 11

1 lawyer from Dykema Gossett named Howard O'Leary  
2 who worked on that.  
3 And then the one in the Kilpatrick  
4 administration was an headed by Edward Keelean,  
5 the deputy director of the department.  
6 Q. And when did that investigation begin, to the  
7 best of your knowledge?  
8 A. I don't remember a date. I became aware of it  
9 when I was -- when Mr. Keelean and another lawyer  
10 named Dennis Mazurek showed me a grand jury  
11 subpoena for Water and Sewerage Department  
12 documents and asked me who at the Water Board  
13 Building they would contact to find all the files  
14 that responded to that subpoena.  
15 Q. Do you know what time frame that was?  
16 A. I don't.  
17 Q. Did that grand jury subpoena request files or  
18 people to testify?  
19 A. The ones that I saw -- and there were several of  
20 them -- were all for documents. They did subpoena  
21 individuals to testify before the grand jury, but  
22 I was not involved in that at all.  
23 Q. Do you know what came first, the subpoenas for  
24 documents or subpoenas for individuals?  
25 A. I think it was the documents.

1 A. Chief assistant corporation counsel.  
2 Q. Did you work with him on other things or just  
3 this one?  
4 A. I worked with Dennis on a number of issues. He  
5 was the head of what's called the municipal  
6 section, which handled -- they responded to  
7 subpoenas in actions where the city was not a  
8 party. They advised the city council on ordinance  
9 drafting, and they handled all the Freedom of  
10 Information Act requests, so anytime the Water and  
11 Sewerage Department got FOIAs, and things like  
12 that, I would deal with him.  
13 Q. How about Ed Keelean? How often did you interact  
14 with him?  
15 A. Not all that often. Primarily I dealt with my  
16 supervisors. In the chain of command above me  
17 there was my supervisor, Judith Turner, and then  
18 she reported to Dennis Mazurek, who reported to Ed  
19 Keelean and Krystal Crittendon.  
20 Q. When you were shown the grand jury subpoenas, do  
21 you know what year that was?  
22 A. I don't.  
23 Q. When you were shown the grand jury subpoenas, was  
24 that the first time that Mr. Keelean had asked  
25 you to get something or direct him in the right

Page 10

Page 12

1 Q. And so you were asked to compile the documents?  
2 A. No, I was not. Mr. Mazurek and Mr. Keelean  
3 compiled the documents. They just -- because I  
4 was familiar with all of the water board's  
5 contracting processes, they always asked me who  
6 was the project manager for this contract that  
7 they were having to find documents on and I would  
8 tell them which building to go to and which people  
9 to contact to find the files, but I did not look  
10 at the files or compile them myself.  
11 Q. Would you recognize those subpoenas if you saw  
12 them now?  
13 A. I don't know. I might.  
14 Q. Have you reviewed any grand jury subpoenas before  
15 or in preparation for your deposition today?  
16 A. No, I have not.  
17 Q. Did you keep a separate file that --  
18 A. I did not. Ed or Mr. Mazurek would show me the  
19 subpoena and I would tell them where to find --  
20 look for the files responsive to the subpoena, and  
21 that was it. I didn't keep copies of the  
22 subpoenas myself.  
23 Q. Was Mr. Mazurek an attorney?  
24 A. Yes.  
25 Q. What was his position?

1 way since you became -- or since he became the  
2 director?  
3 A. I think so, yes. I mean, basically I would deal  
4 with him if was writing a legal opinion for the  
5 Law Department that either he or the corporation  
6 counsel had to sign off on, but it was just  
7 projects like that. An average week, I had no  
8 contact with him.  
9 Q. Did you -- in order to answer his questions, did  
10 you have to ask him about the investigation and  
11 the nature -- the nature of the investigation?  
12 A. Yes. And although I don't know how much the  
13 federal investigators were telling him, he was the  
14 liaison between the federal investigators and the  
15 city. And I don't know what they told him.  
16 Q. What did he tell you?  
17 A. That he was receiving subpoenas, that he was  
18 compiling documents, and that he also sat in on  
19 some of the interviews where the federal  
20 investigators were interviewing city employees.  
21 This was before some of them got called before the  
22 grand jury.  
23 Q. Had you sat in on any interviews?  
24 A. No, but I was interviewed by the assistant U.S.  
25 attorney who was on the investigation.

Page 13

Page 15

1 Q. When was that?  
 2 **A. I don't remember the date. It was several months**  
 3 **before the indictment came out.**  
 4 Q. In 2010?  
 5 **A. It might have been. Either late 2009 or early**  
 6 **2010.**  
 7 Q. So going back to the conversation with  
 8 Mr. Keelean, did he tell you what was being  
 9 investigated?  
 10 **A. I don't know if this is privileged or not, but --**  
 11 **MR. FAISON:** If you think it might be  
 12 privileged, then establish the parameters, and  
 13 then we can figure out whether it's privileged or  
 14 not.  
 15 **THE WITNESS:** He told me general --  
 16 **MR. FAISON:** Not what -- in terms of  
 17 the conversation, how did the conversation come  
 18 up, and did you feel that you were offering law  
 19 advice to him?  
 20 **THE WITNESS:** Well, no, I wasn't  
 21 offering any legal advice. There were  
 22 investigations as far as it involved the  
 23 department that I worked with, of kickbacks being  
 24 paid by contractors or extorted from contractors,  
 25 and there was also in a housing department

1 **they were going to build a new one, and I got**  
 2 **involved as special assignment away from my**  
 3 **regular work, to get involved in negotiating that**  
 4 **contract between the city and the federal**  
 5 **government.**  
 6 Q. Was it within your -- the course and scope of  
 7 your employment to negotiate contracts that  
 8 involved the DWSD?  
 9 **A. Yes.**  
 10 Q. Did you actually write those contracts?  
 11 **A. The department had some standard contract forms**  
 12 **for construction contracts, consultant contracts,**  
 13 **water service contracts and sewer service**  
 14 **contracts with suburbs, and I was involved in**  
 15 **developing all of those basic format contracts.**  
 16 **And then we'd start with that and -- for the**  
 17 **construction contracts and consultant contract,**  
 18 **they didn't change very much. In fact, we just --**  
 19 **the water service contracts, there were a few**  
 20 **provisions we would tweak or touch, but mostly it**  
 21 **was boilerplate. But I was involved in writing**  
 22 **them, yes.**  
 23 Q. The presubpoena, during the interview process by  
 24 the United States Attorney's Office, what did you  
 25 understand the nature of the investigation to be?

Page 14

Page 16

1 contract that I got stuck working on an allegation  
 2 of bid rigging.  
 3 **BY MS. BADALAMENTI:**  
 4 Q. You said kickbacks that were paid by or extorted  
 5 from contractors. Do you know which one was  
 6 being investigated?  
 7 **A. No.**  
 8 Q. Did Mr. Keelean tell you it was one or the other  
 9 or did you gather that information on your own?  
 10 **A. A lot of that came from just reading the**  
 11 **newspapers and watching the television news. The**  
 12 **news media were -- I probably got more information**  
 13 **about the investigation from reading the**  
 14 **newspapers than I did from talking to Ed Keelean.**  
 15 Q. Would that have been at the time that you were  
 16 answering these subpoenas you saw this  
 17 information going on in the news?  
 18 **A. The investigation was all over the newspapers and**  
 19 **the TV stations.**  
 20 Q. What was the housing project?  
 21 **A. That was a fed -- the federal government, the**  
 22 **Department of Housing and Urban Development, was**  
 23 **putting up the money to rebuild an old public**  
 24 **housing project on the west side of Detroit. The**  
 25 **old one had demolished -- been demolished, and**

1 **A. It dealt with misconduct involving city contracts.**  
 2 Q. DWSD contracts or other city contracts?  
 3 **A. Both.**  
 4 Q. Did you learn during the course of those  
 5 interviews that you attended or your own  
 6 interview what contracts were being investigated?  
 7 **A. I didn't -- the only interviews that I attended**  
 8 **was my own, and they were not asking me about**  
 9 **specific contracts. They were asking me what the**  
 10 **city's normal contracting procedures were, how did**  
 11 **contracts get awarded, how did the bid process**  
 12 **start, how did the bid evaluation process work.**  
 13 **And it was more general background information.**  
 14 **They did not ask me about any specific contracts**  
 15 **or contractors.**  
 16 Q. Did they ask you about the sinkhole project?  
 17 **A. No.**  
 18 Q. Did they ask you about Inland Waters?  
 19 **A. No.**  
 20 Q. Did they ask you about Tony Soave?  
 21 **A. No.**  
 22 Q. Any representatives, employees, agents of Inland  
 23 Waters?  
 24 **A. No.**  
 25 Q. What was the typical DWSD contracting process,

Page 17

Page 19

1 the bidding process?

2 **A. Well, there were two types of contracts,**

3 **construction contract -- well, more than two, but**

4 **I'll start with -- construction contracts would**

5 **start with a design. You would give the design, a**

6 **whole sheaf of engineering drawings and the**

7 **boilerplate contract documents to the bidders.**

8 **They would submit sealed competitive bids, and the**

9 **lower bidder was supposed to get the contract.**

10 **Then you would have what were called**

11 **professional services contracts, which were either**

12 **contracts for services by engineering firms in**

13 **which there was a bid evaluation process where**

14 **price was a factor but there were other factors**

15 **like professional competence, experience in doing**

16 **the type of work to be covered by that contract.**

17 **And then you had for some big projects**

18 **design-build contracts where you would be**

19 **evaluating -- where you would give them project**

20 **scope and they would process a basic design and a**

21 **construction and design budget, and that was**

22 **evaluated. It wasn't a pure competitive bid**

23 **situation. You would look at the price but also**

24 **look at the design and the competence of the**

25 **contractors who were on the bid team. Those were**

1 just referred to would CS-1368 fall within?

2 **A. That was a professional service -- actually, wait.**

3 **It was a professional services contract but they**

4 **were managing sewer repairs.**

5 Q. Who was the -- so that would have been subject to

6 a bid evaluation process?

7 **A. Yeah. That contract would have been an**

8 **evaluation, not a pure competitive bid.**

9 Q. So a pure competitive bid the low bidder gets it,

10 period?

11 **A. Yes.**

12 Q. In a professional services contract, bidders are

13 evaluated on a rating system?

14 **A. There's a rating system. When the contracts go**

15 **out for bids, the contractors are told what the**

16 **basic criteria are. They are not told how those**

17 **are weighted. And they are not told -- I don't**

18 **think -- they were not told the identity of the**

19 **committee that was going to evaluate the bid.**

20 Q. And is it your understanding that Inland Waters

21 was evaluated before it was awarded CS-1368?

22 **A. Yes.**

23 Q. Who did that evaluation?

24 **A. I don't know who the members of the committee**

25 **were. For every bid evaluation the director of**

Page 18

Page 20

1 usually a joint venture between the general

2 contractor and the design firm.

3 Q. What was the -- which of these examples would the

4 sinkhole project be characterized as?

5 **A. The sinkhole project was kind of unique. That was**

6 **an emergency. So what they did was they took an**

7 **existing sewer repair contract with Inland Waters,**

8 **who was already working on sewer repair and had**

9 **their equipment and team mobilized and were**

10 **available. They moved them all out to the**

11 **sinkhole and had them stabilize the situation and**

12 **build an emergency bypass around the sinkhole to**

13 **keep the sewage flowing and keep it from backing**

14 **up in all the sewers upstream.**

15 Q. That contract was -- that was already in place

16 was CS-1368?

17 **A. Yes.**

18 Q. How was CS-1368 awarded? Was it through --

19 **A. That was a professional -- CS stands for**

20 **consultant services.**

21 **MR. FAISON:** You're going to have to

22 let her finish her question.

23 **THE WITNESS:** I'm sorry.

24 **BY MS. BADALAMENTI:**

25 Q. Which of the three types of contracts that you

1 **the department would appoint a committee to do the**

2 **evaluation. I don't know who was on the committee**

3 **for that contract. I did not serve on the bid**

4 **evaluation committees.**

5 Q. Do you remember a contract CS-1372?

6 **A. No.**

7 Q. Do you remember that the sinkhole or sewer

8 lining -- sorry -- the sewer lining work that was

9 to be performed under CS-1368 was originally the

10 subject of a different contract with Lakeshore

11 who had been awarded through the bid process?

12 **A. No, I was not aware of that.**

13 **(Mr. Sierzenga present at**

14 **10:45 a.m.)**

15 **BY MS. BADALAMENTI:**

16 Q. Okay. But your understanding is CS-1368 was

17 competitively bid?

18 **A. Yes.**

19 Q. As a professional services contract?

20 **A. Yes.**

21 Q. And you have no knowledge of the contract that

22 was initially awarded to Lakeshore and then

23 cancelled?

24 **A. No.**

25 Q. And moved over to 1368?

Page 21

Page 23

1 **A. I may have heard about it at the time, but I don't**  
 2 **remember anything about it.**  
 3 Q. If you had heard about it, who would that have  
 4 been from?  
 5 **A. Probably Darryl Latimer. He was running the**  
 6 **contracts and grants group in those days.**  
 7 Q. Had there ever been something like that happen  
 8 where a contract -- professional services  
 9 contract had been awarded and it was cancelled  
 10 and a different contractor was given the award?  
 11 **A. Contracts were awarded and terminated on a regular**  
 12 **basis usually, so it would not raise any red flags**  
 13 **to me if work got shifted from one to the other.**  
 14 Q. Do you know who would direct such a process to  
 15 occur?  
 16 **A. That would come from the director.**  
 17 Q. The director of?  
 18 **A. The Water and Sewerage Department.**  
 19 Q. And at this time who would that have been?  
 20 **A. Victor Mercado.**  
 21 Q. Do you remember having any conversations with  
 22 Victor Mercado about 1372 being cancelled?  
 23 **A. No.**  
 24 Q. Was it your understanding that when 1372 was  
 25 cancelled and it was moved over to some different

1 **A. Yes.**  
 2 Q. My question is whether -- what information you  
 3 have regarding that award process.  
 4 **A. I really don't remember anything about the award**  
 5 **of that specific contract, because generally I was**  
 6 **not involved in evaluation of bids. Once the**  
 7 **contract was signed, I would review it before it**  
 8 **went to the Board of Water Commissioners for**  
 9 **approval.**  
 10 **MARKED FOR IDENTIFICATION:**  
 11 **DEPOSITION EXHIBIT 1**  
 12 10:50 a.m.  
 13 **BY MS. BADALAMENTI:**  
 14 Q. Do you recognize the document that I have just  
 15 handed you?  
 16 **A. This is Amendment No. 1 to Contract 1368.**  
 17 Q. Do you recognize the exhibit that's been --  
 18 document that's been marked Exhibit 1?  
 19 **A. I do.**  
 20 Q. Were you involved in the award of this Amendment  
 21 1 to CS-1368?  
 22 **A. No.**  
 23 Q. Were you involved in the preparation of this  
 24 Amendment 1?  
 25 **A. The preparation was done by the contracts and**

Page 22

Page 24

1 contractor, was the process completed again? Was  
 2 the evaluation process completed again?  
 3 **A. Well, when 1368 was awarded, there would have been**  
 4 **an evaluation. If work was added to or taken out**  
 5 **of the scope of the contract, that would have been**  
 6 **done by a contract amendment after the contract**  
 7 **was awarded.**  
 8 Q. Okay.  
 9 **A. I mean, there's a scope of work in the contract**  
 10 **when it goes out for bids, but that can be changed**  
 11 **by amendments that either add work or take work**  
 12 **out.**  
 13 Q. So if 1372 was cancelled and that was moved over  
 14 to a different contractor, it would be your  
 15 belief that would be due to a different scope of  
 16 work than on 1368?  
 17 **A. I don't understand the question.**  
 18 Q. The contract CS-1368 was awarded to Inland  
 19 Waters, correct?  
 20 **A. Yes.**  
 21 Q. And your belief is that it was awarded pursuant  
 22 to a bidding process?  
 23 **A. Yes.**  
 24 Q. A professional services evaluation process,  
 25 right?

1 **grants group. I would review it after the**  
 2 **negotiation was finalized, but typically the**  
 3 **negotiation of an amendment was done by the**  
 4 **contracts and grants group and engineers who were**  
 5 **the project managers for the contract. I**  
 6 **generally was not involved in that.**  
 7 Q. What was the scope of the work that was covered  
 8 by this Amendment 1?  
 9 **A. The scope of the work is -- actually there is no**  
 10 **scope of work in this amendment, which means that**  
 11 **the scope of work that was in the initial contract**  
 12 **would remain in place. And it looks like this one**  
 13 **was simply adding additional funding to cover more**  
 14 **of the same types of work.**  
 15 Q. Who would be -- who would initiate an amendment  
 16 like this where they're approving more money for  
 17 the same work?  
 18 **A. That would typically be the engineering department**  
 19 **that was administering the contract. If they**  
 20 **found that there was more work that needed to be**  
 21 **done, then they would ask for a budget increase**  
 22 **and a contract amendment putting more money. And**  
 23 **sometimes they would add work to the scope of a**  
 24 **contract. And this one -- this amendment doesn't**  
 25 **do that. It's just sewer inspection and relining,**

<p style="text-align: right;">Page 25</p> <p>1 and there are unit prices for various sizes of 2 pipe. 3 Q. Is it your understanding that the work had 4 changed in some aspect or that it had -- the 5 scope of the original work was different when 6 they got in to do it, or what was the reason that 7 amendment was necessary? 8 A. Well, the explanation is in the second and third 9 pages of this exhibit. There's a memorandum to 10 the Board of Water Commissioners from the director 11 explaining the need for the contract amendment, 12 which simply says that they're inspecting and 13 relining old sewers, and that they want to have 14 additional work done, but it's the same type of 15 work. They're just adding more money. 16 Q. Is it additional work or are they relining a 17 different areas or -- 18 A. This covers sewers for the whole area of the 19 city -- service area. 20 Q. Did the original 1368 cover the same scope? 21 A. I haven't seen the original -- the scope of work 22 is in contract -- the original contract document, 23 which I do not have before me. 24 <b>MARKED FOR IDENTIFICATION:</b> 25 <b>DEPOSITION EXHIBIT 2</b></p>	<p style="text-align: right;">Page 27</p> <p>1 added additional money to the budget for more 2 sewer inspection and relining. 3 Q. Would there have been any review to determine why 4 the full budget was spent but the project not 5 complete in that sort of circumstance? 6 A. Well, the City of Detroit has over a thousand 7 miles of sewers, and so there is a constant need 8 to inspect and repair, because many of them are 9 over 50 years old and some of them are 10 deteriorating. So you can't ever say the sewer 11 system is fixed and it's set. It's always 12 changing. 13 Q. So it's your understanding that simply that more 14 work needed to be done? 15 A. For Amendment 1, yes. 16 Q. What was the date of the original contract? 17 A. The original contract was approved by the Detroit 18 City Council on June 26, 2002. 19 Q. And would you agree with me that it contemplated 20 three years' worth of sewer lining work? 21 A. Yes, actually 4.03 of the contract says the 22 contract duration is three years. 23 Q. So it wasn't that we were going outside of that 24 original three-year term and the sewers still 25 needed to be inspected and repaired and lined;</p>
<p style="text-align: right;">Page 26</p> <p>1 10:55 a.m. 2 <b>BY MS. BADALAMENTI:</b> 3 Q. I marked as Exhibit 2 a document that is titled 4 Contract CS-1368. Do you recognize that 5 document? 6 A. Yes, I do. 7 Q. Is that the original contract? 8 A. This is the original contract that Exhibit 1 9 amended. 10 Q. With that now in front of you, are you able to 11 tell me whether or not the area or type or 12 anything about the scope of work changed? 13 A. The scope of work was not changed by the 14 amendment. The scope of work involves inspecting 15 sewers owned by the Detroit Water and Sewerage 16 Department, evaluating their condition, and 17 repairing and relining the ones that needed 18 repair. 19 Q. So did the job change to necessitate Amendment 1 20 or did something else occur to necessitate 21 Amendment 1? 22 A. As I read these two documents, what happened was 23 they spent the full budget on the original 24 contract and decided they needed to have more of 25 that work done and more sewers inspected, so they</p>	<p style="text-align: right;">Page 28</p> <p>1 we're within that time frame, right, when we 2 enter into Amendment 1? 3 A. Amendment 1 was approved by the city council on 4 February 2nd, 2005, so -- 5 Q. Amendment 1 is -- there's a motion to the Board 6 of Water Commissioners as of August 25th of 2004, 7 correct? 8 A. Right. 9 Q. So the board might not approve it until 2005, but 10 they've used up their budget from the original -- 11 A. At some point. 12 Q. Hold on. Let me finish. They've used up their 13 budget from 2002 to August 25th of 2004? That's 14 when they request additional funding? 15 A. They requested an additional \$10 million to do 16 more work and they did not -- this Amendment No. 1 17 did not extend the time of performance. 18 Q. So within the same three-year time frame we're 19 upping the budget \$10 million? 20 A. Yeah. 21 <b>MR. FAISON:</b> I object to the suggestion 22 that all money had been used up on the contract at 23 the time the motion was filed. There is no 24 evidence to support that suggestion. 25 <b>MS. BADALAMENTI:</b> I appreciate the</p>



Page 29

Page 31

1 testimony, counsel, but I think Mr. Walter  
2 testified that as of the motion, but I'll ask him.  
3 **BY MS. BADALAMENTI:**  
4 Q. As of the date of the motion, it looks to me like  
5 Victor Mercado is representing in page 2 and 3  
6 that additional funding is necessary, but what is  
7 your understanding?  
8 **A. He's saying -- it's on the second page of the**  
9 **motion -- and I'll quote: "In order to provide**  
10 **the department with the means necessary to**  
11 **continue the rehabilitation work described above,**  
12 **and respond to potential sewer repair emergencies**  
13 **until a new contract is in place, it is**  
14 **recommended that the budget for Contract CS-1368**  
15 **be increased by \$10,000,000 to close out the**  
16 **contract."**  
17 Q. In the first line of page 3 it says "The current  
18 balance of approximately \$12,200,000.00 is  
19 insufficient to cover the monthly cost of  
20 rehabilitation," which is about \$1,600,000 per  
21 month. Is it your understanding that that  
22 \$1.6 million per month was what was originally  
23 contemplated by CS-1368 or that that amount was  
24 more, such that the funding was going to run out  
25 during the three-year term?

1 relining old sewers that were deteriorated. You  
2 just look at the condition of the sewer, and if  
3 it's cracking or pitting, you reline it.  
4 **BY MS. BADALAMENTI:**  
5 Q. So this CS-1368 wasn't really any of those three  
6 types of contracts. That's what you're telling  
7 me now. It wasn't construction contracts; it  
8 wasn't a professional services contract; it  
9 wasn't a design-build contract. It was something  
10 different. Now we have a fourth category of  
11 contract?  
12 **A. Well, this -- this would be more of -- the scope**  
13 **of work here is inspecting sewers and relining the**  
14 **ones that need to be relined. So the inspection**  
15 **work and evaluation is professional services, and**  
16 **the relining work is basically construction work;**  
17 **so they were doing both in this contract.**  
18 Q. So is it your testimony that this is a fourth  
19 type of contract? It's not one of those three?  
20 **A. Yeah, there -- yeah.**  
21 Q. What other contracts were as-needed contracts?  
22 **A. Oh, the sludge hauling contracts for the**  
23 **wastewater treatment plant. Depending on how many**  
24 **tons of sludge the plant produces -- you'd have**  
25 **trucking companies on call. You would have what**

Page 30

Page 32

1 **A. I think the original anticipation was that the**  
2 **budget was going to be -- in the original**  
3 **contract, was going to be sufficient for the**  
4 **three-year term, but obviously they found**  
5 **additional work. You don't know what state the**  
6 **sewers are in until you actually get in there and**  
7 **take a look at them. And obviously they found**  
8 **more deterioration in the sewers and they wanted**  
9 **to have more work done.**  
10 Q. So in the professional services context you told  
11 me that there is a design process that goes into  
12 the proposal submitted by the professional. So  
13 is it your testimony now that they might not have  
14 known what the design or nature or how much sewer  
15 they were going to be covering --  
16 **A. Well --**  
17 **MR. FAISON:** Hold on. Let her --  
18 **MS. BADALAMENTI:** That's okay.  
19 **MR. FAISON:** Let her finish her  
20 question. That way I can figure out whether the  
21 question is objectionable or not before you  
22 answer.  
23 **THE WITNESS:** Okay. This was not  
24 really a design contract. This was more an  
25 as-needed inspection and rehabilitation work for

1 were called as-needed design services where you'd  
2 have engineering firms under contract and you  
3 would assign projects to them.  
4 You had what was called skilled  
5 maintenance contracts where you would have  
6 contractors that would provide skilled trades work  
7 at pump stations and water treatment plants and  
8 the sewer plant. And that was all on an as-needed  
9 basis. Some days they'd be doing nothing and some  
10 days they'd have a full crew.  
11 Q. Those contracts would have a total contract  
12 amount and they would work for a certain period  
13 of time within that contract amount, right?  
14 **A. You would start -- yeah, you would have a contract**  
15 **amount that they could not go over without an**  
16 **amendment increasing the price, and there would be**  
17 **an initial time frame, and that would require a**  
18 **contract amendment to shorten or extend it.**  
19 Q. The sludge hauling contracts, the engineering  
20 contracts, were those -- were there typically  
21 amendments in connection with those types of  
22 contracts?  
23 **A. Yes.**  
24 Q. Would the amendments not extend the time but  
25 extend the budget?

Page 33

Page 35

1 **A. You could get any combination of that. You could**  
 2 **have a time-only extension. You could have a**  
 3 **budget extension or you could have both.**  
 4 Q. Tell me some of the amendments that you're aware  
 5 of on these as-needed-type contracts where the  
 6 time is not extended but the budget is. Any  
 7 other example you can give me?  
 8 **A. Oh, sometimes on the sludge hauling contracts, if**  
 9 **you've got -- if the plant was producing more**  
 10 **sludge than normal, things like that.**  
 11 Q. Any others?  
 12 **A. It could happen on any type of contract.**  
 13 Q. Was this the only contract that you were involved  
 14 with where the City of Detroit was contracting  
 15 with a contractor or professional services  
 16 provider to inspect the sewer system?  
 17 **A. No. There were a number of those contracts over**  
 18 **the years.**  
 19 Q. Who were some of the other contractors?  
 20 **A. There was a company called Insituform --**  
 21 **Insituform of Michigan, which was owned by the**  
 22 **same holding company that owns Inland Waters.**  
 23 **There was a company called Lanzo Construction that**  
 24 **had a contract for relining some of the larger**  
 25 **sewers and outfalls on the Detroit River. Those**

1 **MARKED FOR IDENTIFICATION:**  
 2 DEPOSITION EXHIBIT 3  
 3 11:08 a.m.  
 4 **BY MS. BADALAMENTI:**  
 5 Q. Do you recognize that document?  
 6 **A. Um-hmm. I do.**  
 7 Q. When do you believe that Amendment 2 was entered  
 8 into?  
 9 **A. By city charter the official date of the contract**  
 10 **is the date of city council approval, which in**  
 11 **this case is -- well, it says December 20 --**  
 12 **either 20 or 30. I can't read the purchasing**  
 13 **director's handwriting, but it's December either**  
 14 **the 20th or 30th of 2004.**  
 15 Q. And what do you understand Amendment 2 to cover?  
 16 **A. This is the contract for the emergency work after**  
 17 **the sewer collapsed on 15 Mile Road.**  
 18 Q. That sewer collapse occurred August 22, 2004.  
 19 Does that sound about right now?  
 20 **A. That sounds right.**  
 21 Q. Would this -- there have been some discussions  
 22 with Inland Waters about the terms of this  
 23 amendment when it was put on the sinkhole repair  
 24 project, in other words, immediately or within  
 25 days of its occurrence?

Page 34

Page 36

1 **are the ones I can think of off the top of my**  
 2 **head.**  
 3 Q. Would the contract with Lanzo have an amendment  
 4 like this one where it was not extending the time  
 5 but it did extend the budget?  
 6 **A. I don't know.**  
 7 Q. Do you know what that contract number was?  
 8 **A. No.**  
 9 Q. How about the contract with Insituform? Were  
 10 there extensions of the budget without extensions  
 11 of time for performance?  
 12 **A. There were amendments to that contract. There**  
 13 **were several contracts with Insituform over the**  
 14 **years because for a long time Insituform owned the**  
 15 **patent on the sewer relining process, and they**  
 16 **were the only company that could do that kind of**  
 17 **work, and then -- and there were amendments to**  
 18 **that contract. Typically those were extending**  
 19 **both the time and increasing the budget. And**  
 20 **eventually there was some other processes that**  
 21 **competed with Insituform that came onto the**  
 22 **market, and then we could start competitively**  
 23 **bidding those contracts.**  
 24 Q. The next amendment that comes to CS-1368,  
 25 Amendment 2, I am marking as Exhibit 3.

1 **A. Yeah. Somebody at the department would have**  
 2 **talked to them about what it was going to take to**  
 3 **get them out there, get them mobilized, and get**  
 4 **the initial emergency stabilization work done.**  
 5 Q. Who would -- when you say someone at the  
 6 department, do you mean your department?  
 7 **A. Not me. Someone at the Water and Sewerage**  
 8 **Department.**  
 9 Q. Any idea who would have that type of conversation  
 10 or any idea who had that conversation?  
 11 **A. Well, on something this big, the director, Victor**  
 12 **Mercado, would have been involved, and some -- he**  
 13 **would have had some people from the engineering**  
 14 **department involved in that as well. I was not**  
 15 **involved in the meetings with Inland Waters.**  
 16 Q. When you -- when you do get involved, what do you  
 17 -- I guess what time frame do you get involved?  
 18 Is it within days or weeks?  
 19 **A. I was actually out at the site of the collapse a**  
 20 **couple days after it happened.**  
 21 Q. And why is that?  
 22 **A. Because it was a big emergency project and I**  
 23 **worked with Darryl Latimer on putting this**  
 24 **contract amendment together.**  
 25 Q. What information did you take from the site visit

<p style="text-align: right;">Page 37</p> <p>1 to put this contract together?</p> <p>2 <b>A. Well, the site visit was just to go out there and</b></p> <p>3 <b>see how bad the situation was. It was a huge hole</b></p> <p>4 <b>about 60 feet deep and there were four houses with</b></p> <p>5 <b>half their backyard in the bottom of the hole.</b></p> <p>6 <b>There was going to be a lot of work for lawyers on</b></p> <p>7 <b>a project like that.</b></p> <p>8 <b>Q. A lot of work for what?</b></p> <p>9 <b>A. Lawyers on a project like that. And so basically</b></p> <p>10 <b>Darryl and I took the scope of work that the</b></p> <p>11 <b>engineers worked out with Inland Waters in the</b></p> <p>12 <b>original budget and put it in the city's amendment</b></p> <p>13 <b>form and fast-tracked it through the Board of</b></p> <p>14 <b>Water Commissioners for approval.</b></p> <p>15 <b>MR. FAISON: Can you keep your voice</b></p> <p>16 <b>up.</b></p> <p>17 <b>THE WITNESS: Okay.</b></p> <p>18 <b>BY MS. BADALAMENTI:</b></p> <p>19 <b>Q. So by the time you got out there a couple days</b></p> <p>20 <b>later, the scope and the budget is already</b></p> <p>21 <b>decided on?</b></p> <p>22 <b>A. They were being worked out.</b></p> <p>23 <b>Q. Being worked out by whom?</b></p> <p>24 <b>A. By the department's engineers and the Inland</b></p> <p>25 <b>Waters project managers who were out there at the</b></p>	<p style="text-align: right;">Page 39</p> <p>1 <b>declare that this is an emergency and can award a</b></p> <p>2 <b>contract immediately, and I don't know if that was</b></p> <p>3 <b>done in this case or not. Actually, since I don't</b></p> <p>4 <b>see anything in here that says it was an</b></p> <p>5 <b>emergency, it may not have been done. If there</b></p> <p>6 <b>was an emergency declaration for this amendment --</b></p> <p>7 <b>okay, yeah. I take that back. There is. There</b></p> <p>8 <b>is an emergency order. There is the first page of</b></p> <p>9 <b>an emergency order awarding this contract</b></p> <p>10 <b>amendment, which is probably why the date of city</b></p> <p>11 <b>council approval is blank. It wasn't approved by</b></p> <p>12 <b>the city council. This was awarded under an</b></p> <p>13 <b>emergency procedure. This was a special</b></p> <p>14 <b>administrative order, but this is just the first</b></p> <p>15 <b>page of it. There had to be a second page,</b></p> <p>16 <b>because it's incomplete. This is incomplete. And</b></p> <p>17 <b>this is different from the procedure under the</b></p> <p>18 <b>purchasing ordinance that I just outlined.</b></p> <p>19 <b>Q. Let me show you Exhibit 4.</b></p> <p>20 <b>MARKED FOR IDENTIFICATION:</b></p> <p>21 <b>DEPOSITION EXHIBIT 4</b></p> <p>22 <b>11:16 a.m.</b></p> <p>23 <b>BY MS. BADALAMENTI:</b></p> <p>24 <b>Q. It has what looks to be a similar page 1.</b></p> <p>25 <b>A. Okay. Is Amendment No. 3. Yeah, this is -- yeah,</b></p>
<p style="text-align: right;">Page 38</p> <p>1 <b>site.</b></p> <p>2 <b>Q. Was Victor Mercado out there at the site?</b></p> <p>3 <b>A. He was out there at the site, yes.</b></p> <p>4 <b>Q. When you say the project engineers, who do you</b></p> <p>5 <b>remember being out there?</b></p> <p>6 <b>A. Ramesh -- for the City of Detroit it was Ramesh</b></p> <p>7 <b>Shukla, and there were some other people out</b></p> <p>8 <b>there, too, but he was the one that was the DWSD</b></p> <p>9 <b>point person. And I think Mercado said that he</b></p> <p>10 <b>was out there every day for the first month.</b></p> <p>11 <b>Q. That he himself or he, Shukla?</b></p> <p>12 <b>A. No -- well, both of them.</b></p> <p>13 <b>Q. Do you know if the mayor was ever out there?</b></p> <p>14 <b>A. He went out there once that I know of, because I</b></p> <p>15 <b>saw photos of him with -- out there wearing a hard</b></p> <p>16 <b>hat and a safety vest. I don't know if he went</b></p> <p>17 <b>out there again, but I know Mercado gave him a</b></p> <p>18 <b>tour of the site.</b></p> <p>19 <b>Q. Are there actually in the City of Detroit --</b></p> <p>20 <b>prior to city council approval, can amounts be</b></p> <p>21 <b>paid on contracts that are awarded but not</b></p> <p>22 <b>formalized by council approval?</b></p> <p>23 <b>A. There is a procedure in the city's purchasing</b></p> <p>24 <b>ordinance for an emergency contract where you</b></p> <p>25 <b>have -- which the purchasing director has to</b></p>	<p style="text-align: right;">Page 40</p> <p>1 <b>this is the full emergency order.</b></p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>A. So the second page of this order, there is a</b></p> <p>4 <b>similar -- there has to be a similar page to</b></p> <p>5 <b>Amendment 2 that somehow isn't in the document,</b></p> <p>6 <b>but it would look a lot like this.</b></p> <p>7 <b>Q. And the -- would that be something that was</b></p> <p>8 <b>retained with the City of Detroit, page 2 of this</b></p> <p>9 <b>order?</b></p> <p>10 <b>A. Yeah, there would have to be a second page because</b></p> <p>11 <b>it would require the mayor's signature. So there</b></p> <p>12 <b>is a second page to the order for Amendment No. 2.</b></p> <p>13 <b>It's just not in this package of documents I have</b></p> <p>14 <b>in front of me.</b></p> <p>15 <b>Q. Do you know when that would have been signed?</b></p> <p>16 <b>A. No. The date isn't in here, so -- well, I'll tell</b></p> <p>17 <b>you all of the resolutions or the signatures are</b></p> <p>18 <b>dated in November of 2004, so it might have been</b></p> <p>19 <b>done then.</b></p> <p>20 <b>Q. And the reason why an emergency order or an order</b></p> <p>21 <b>like this is done that's on page 2 of Exhibit 3</b></p> <p>22 <b>and page 2 and 3 of Exhibit 4 -- tell me again</b></p> <p>23 <b>why is this done.</b></p> <p>24 <b>A. This is -- this is a long story, but this was --</b></p> <p>25 <b>the authority to issue orders like this was given</b></p>

Page 41

1 to the mayor of Detroit in an order signed by  
2 Judge Jon Feikens of the U.S. District Court.  
3 Here in Detroit -- and this goes back to a lawsuit  
4 that the Environmental Protection Agency filed  
5 against the Detroit Water and Sewerage Department  
6 in 1977, which was assigned to Judge Feikens in  
7 1977. And he was the judge on that case till  
8 about 2003, when his health -- when he was in his  
9 90s, and at that time his health got too bad that  
10 it was transferred to Judge Sean Cox. But Judge  
11 Feikens basically was overseeing the operations of  
12 the department, because it was having -- over the  
13 years it fell -- the sewage system fell out of  
14 compliance with the Clean Water Act a number of  
15 times, and twice during the over 30 years that  
16 that lawsuit lasted, Judge Feikens entered orders  
17 appointing the mayor of Detroit as what he called  
18 the special administrator of the wastewater  
19 system. He did it once during the Young  
20 administration and again during the Archer  
21 administration, and which basically gave the mayor  
22 of Detroit the authority to bypass the city  
23 council and award contracts for necessary services  
24 to keep the water system operating -- the sewage  
25 system operating and in compliance with the Clean

Page 42

1 Water Act. And when Kwame Kilpatrick became the  
2 mayor, he entered an order transferring the  
3 special administrative powers from Mayor Archer to  
4 Mayor Kilpatrick which basically gave the mayor  
5 the power to award contracts without going through  
6 the purchasing department.  
7 The City of Detroit's purchasing  
8 process is incredibly cumbersome, and from the  
9 start to finish of awarding a contract it could  
10 take over a year. That's how dysfunctional the  
11 city's purchasing department is, which made it  
12 very, very hard to buy spare parts for the  
13 equipment at the sewage plant which broke down and  
14 couldn't be prepared because we couldn't get  
15 parts.  
16 So basically the judge in a fit of  
17 exasperation or inspiration or whatever gave the  
18 mayor the power to bypass the whole purchasing  
19 system and just award contracts. And there were  
20 monthly reports to the judge on what was done  
21 under that power, and so this was not done under  
22 the purchasing director's emergency powers. This  
23 was done under the emergency powers that the judge  
24 gave to the mayor.  
25 Q. Prior to the order for Amendment 2 to CS-1368,

Page 43

1 were you aware of any other contract that had  
2 been awarded by the mayor on this type of basis?  
3 A. There were several of them, and I don't remember  
4 the numbers.  
5 Q. By Mayor Kilpatrick?  
6 A. By Mayor Kilpatrick, by Mayor Archer, and by Mayor  
7 Young.  
8 Q. Which were awarded by Mayor Kilpatrick under  
9 this --  
10 A. I don't remember the numbers.  
11 Q. Any others to Inland that you're aware of?  
12 A. I don't remember any, but that doesn't mean it  
13 didn't happen.  
14 Q. Okay. When the federal investigation -- you were  
15 interviewed in connection with the federal  
16 investigation, was that part of what you were  
17 asked about, this special administrative order?  
18 A. I think I explained the process to them, yes. It  
19 only applied to contracts for the sewage system.  
20 They could not award contracts like that for  
21 anything related to the water system, just sewage.  
22 Q. So the order's issued. And we don't know the  
23 date for Amendment 2.  
24 A. There was an order issued -- since the signature  
25 resolutions which would have been done around the

Page 44

1 same time are dated -- it was sometime in 2005,  
2 but I'm not going to guess at the date.  
3 Q. I see city acknowledgement's dated --  
4 A. Yeah, November 2005, so that might be when this  
5 was signed.  
6 Q. Let me stop you. I see them dated November 2004.  
7 A. I'm sorry.  
8 Q. Resolution of corporate authority dated  
9 November 10, 2004.  
10 A. Yeah. And which was a few months after the  
11 collapse in August of 2004.  
12 Q. And this contract is eventually put through city  
13 council; would you agree with that, or did that  
14 not even occur?  
15 A. Well, if it's awarded by an emergency order by the  
16 mayor, it did not have to go through city council,  
17 so it would not have been submitted to the city  
18 council. And the space on the boilerplate  
19 signature form for entry of the city council  
20 approval date is blank, which suggests that it was  
21 never submitted to city council. It didn't need  
22 to be.  
23 Q. Okay. So by November, you would agree with me --  
24 November 2004, that at least some of the work had  
25 begun on the sinkhole repair?

Page 45

Page 47

1 **A. They began work in August. They were out on the**  
 2 **emergency bypass, yeah.**  
 3 Q. Would there have been payments made prior to the  
 4 November date, if that's the date?  
 5 **A. I don't know when the payment --**  
 6 Q. If -- assuming the November resolution dates are  
 7 the date of the order, the pages we don't have to  
 8 this order, would that mean that there were  
 9 payments issued prior to or not?  
 10 **A. I don't know when the payments on this contract**  
 11 **were made. I never reviewed the invoices.**  
 12 Q. Is this order something -- a form that you would  
 13 prepare?  
 14 **A. No. That -- those were typically prepared by Mark**  
 15 **Jacobs of Dykema Gossett. I never prepared one of**  
 16 **those.**  
 17 **MR. FAISON:** Are you talking about  
 18 emergency orders?  
 19 **THE WITNESS:** The emergency orders,  
 20 award of contracts under the emergency powers as  
 21 special administrator, Mark drafted those.  
 22 **BY MS. BADALAMENTI:**  
 23 Q. Are they emergency orders that -- the title  
 24 doesn't refer to emergency orders. Is that what  
 25 you're understanding is, that the special --

1 Q. Amendment 2, which I believe is Exhibit 3.  
 2 **A. Amendment 2, which is Exhibit 3, okay.**  
 3 Q. There is a cover page for Exhibit B-2, Costing  
 4 Summary for Exhibit A-1. Do you see that there?  
 5 **A. Um-hmm.**  
 6 Q. Behind that cover page is a document prepared by  
 7 Mr. Shukla, who was from the engineering  
 8 department, right?  
 9 **A. Um-hmm.**  
 10 Q. Is that a yes?  
 11 **A. Yes. Yes.**  
 12 Q. Do you recognize this document?  
 13 **MR. FAISON:** Let me find it. Where are  
 14 we?  
 15 **THE WITNESS:** We're right here.  
 16 **BY MS. BADALAMENTI:**  
 17 Q. You're in the original contract. We're in  
 18 Amendment 2.  
 19 **MR. FAISON:** Exhibit what?  
 20 **MS. BADALAMENTI:** 3.  
 21 **THE WITNESS:** Exhibit 3.  
 22 **MR. FAISON:** How far back?  
 23 **MS. BADALAMENTI:** Near the back. The  
 24 cover sheet looks like this.  
 25 **MR. FAISON:** Exhibit B-2.

Page 46

Page 48

1 **A. Well --**  
 2 Q. Hold on. Let me finish. Is it your  
 3 understanding that the special administrator, the  
 4 mayor, could only issue an order like this that  
 5 bypasses the traditional contract approval system  
 6 in an emergency situation?  
 7 **A. No. They were called special administrative**  
 8 **orders. I'm using the "emergency" word because**  
 9 **this project was a catastrophic emergency. But**  
 10 **they were awarded for any type of contractual**  
 11 **service that the city needed that could not be --**  
 12 **the purchasing department could not supply in a**  
 13 **timely way.**  
 14 Q. And would you be provided with an order like this  
 15 when it was done for a particular contract that  
 16 you had worked on?  
 17 **A. I would review the contract for the Law Department**  
 18 **and then my supervisor would sign on the bottom**  
 19 **line of the signature page because the city**  
 20 **charter requires Law Department approval of all**  
 21 **contracts. So I would review this before my**  
 22 **supervisor signed it.**  
 23 Q. So going to -- there's a page in the document --  
 24 **A. Which document are we looking at? Which exhibit**  
 25 **number?**

1 **MS. BADALAMENTI:** Exhibit B-2.  
 2 **MR. FAISON:** Thank you.  
 3 **BY MS. BADALAMENTI:**  
 4 Q. Do you recognize this document authored by  
 5 Mr. Shukla?  
 6 **A. Well, it's part of the contract amendment, yes.**  
 7 Q. Is it something you would have reviewed?  
 8 **A. I would have reviewed this when I reviewed the**  
 9 **whole amendment, yes.**  
 10 Q. The document is dated September 20, 2004. Do you  
 11 have a recollection of a costing summary being  
 12 prepared around that time?  
 13 **A. I did not prepare -- I don't prepare costing**  
 14 **supplements. I don't prepare costing documents**  
 15 **for these contracts.**  
 16 Q. Would you need to approve the language?  
 17 **A. I would review it as part of the Law Department**  
 18 **review, yes.**  
 19 Q. Are costing supplements things that were used by  
 20 the DWSD?  
 21 **A. Yeah, there's -- well, there was a cost summary in**  
 22 **every contract. There's a lump sum -- there's a**  
 23 **total price, and then in a construction contract,**  
 24 **it's a lump sum. But in a contract like this,**  
 25 **there would be a breakdown what those costs were.**

Page 49

1 There might be unit prices. There might be hourly  
 2 rates. It would depend on the type of contract.  
 3 There would be something breaking it down.  
 4 Q. So the costing summary for CS-1368, the original  
 5 sewer lining project, is that something that we  
 6 see in these documents here?  
 7 A. Well, the costing summary in Exhibit 1 is several  
 8 pages -- more than several -- of unit prices for  
 9 sewer lining based on the diameter of the sewer  
 10 and then the linear feet of pipe rehabilitated.  
 11 Q. That would be Exhibit B-2?  
 12 A. This is Exhibit B, captioned Cost Information  
 13 Sheet.  
 14 Q. Okay. Let me get the record situated here. It  
 15 would be Exhibit B to the document titled  
 16 Contract CS-1368, which we've marked as  
 17 Exhibit 2?  
 18 A. Yes.  
 19 Q. Okay. Exhibit B to Exhibit 2 has these unit  
 20 prices, right?  
 21 A. Yeah. Exhibit B to Exhibit 2 is a long list of  
 22 unit prices based on the diameter of the sewer and  
 23 the number of linear feet rehabilitated or  
 24 realigned.  
 25 Q. What I don't see in this cost information sheet

Page 50

1 in Exhibit 2 is any sort of information about  
 2 overtime, mobilization of equipment. Why is that  
 3 now dealt with in Amendment 2?  
 4 A. Because Amendment 2 was for a different type of  
 5 work. Amendment -- the original contract document  
 6 is they go in and inspect the sewer. If it's a  
 7 small sewer, they run a television camera through  
 8 it. If it's a big sewer, you can walk through it.  
 9 And then there is a linear -- and I'm looking  
 10 for -- well --  
 11 Q. Let me see if I can help you with it. Is it the  
 12 case that the cost information sheet in the  
 13 original contract would include the manpower  
 14 required to inspect --  
 15 A. Yes.  
 16 MR. FAISON: Let her finish. You have  
 17 to let her finish the question, because the court  
 18 reporter has to take it down, as you know,  
 19 Robert --  
 20 THE WITNESS: Yeah.  
 21 MR. FAISON: -- her question and your  
 22 answer, and I have to hear her question to find  
 23 out whether or not I have an objection to it. So  
 24 if you would -- we're dealing with two fast  
 25 talkers here. Slow down the process a little bit.

Page 51

1 THE WITNESS: Okay.  
 2 BY MS. BADALAMENTI:  
 3 Q. So the unit price that's shown in this cost  
 4 information sheet would include everything that  
 5 went into that particular type of work, the  
 6 inspection service, use of television equipment,  
 7 the manpower required? Everything would be  
 8 included within the unit price?  
 9 A. The unit price includes labor and material,  
 10 inspection work, everything. The contractor has  
 11 to set that price high enough to cover all of its  
 12 costs.  
 13 Q. Does this original CS-1368 document provide for  
 14 overtime?  
 15 A. No. It provides for unit prices, and if the  
 16 contractor has to work overtime, it has to take  
 17 the overtime -- pay for its employees out of this  
 18 unit price.  
 19 Q. September 20th of 2004 we see Mr. Shukla now  
 20 providing for labor, overhead, markups, overtime.  
 21 These types of things are now going to be  
 22 included within the amounts that Inland can  
 23 charge; is that correct?  
 24 A. On the project covered by this amendment, which  
 25 was the sewer collapse on 15 Mile Road only.

Page 52

1 Q. Okay. Who would authorize Mr. Shukla to execute  
 2 a costing supplement like this?  
 3 A. The director, Mr. Mercado.  
 4 Q. Who would authorize Mr. Mercado to do that?  
 5 A. As the director of the Water and Sewerage  
 6 Department, he had the authority to do that. I  
 7 don't know if he discussed it with the mayor or  
 8 not.  
 9 Q. The next page is dated April 4, 2005.  
 10 A. Okay. We're still in Exhibit 3, okay.  
 11 Q. Right. This April 4, 2005 document is a letter  
 12 by Victor Mercado. Do you see that there?  
 13 A. Yes.  
 14 Q. Is this something you've seen before?  
 15 A. It's part of the contract. Yes, I've seen it  
 16 before.  
 17 Q. By April 4, 2005, has most of the work or some of  
 18 the work been done on the project?  
 19 A. Some of the work has been done. I think that  
 20 project ran into June or July of 2005, before all  
 21 of it was done.  
 22 Q. This document by Victor Mercado dated April 4,  
 23 2005, is proposing a different costing  
 24 supplement. Do you understand that to be the  
 25 case?

Page 53

Page 55

1 **A. No. This is just talking about the kind of**  
 2 **documentation they have to submit with their**  
 3 **invoices to get the invoices approved. That's how**  
 4 **I read it.**

5 Q. So the -- the paragraph reads "The other cost  
 6 guidelines contained in the attached costing  
 7 supplement will govern all work performed on the  
 8 contract from its inception until final  
 9 completion." Do you see that there?

10 **A. Yes.**

11 Q. So this document is intended to provide a  
 12 different costing framework going all the way  
 13 back to August, when the project began. Would  
 14 you agree with that?

15 **A. This references some negotiations over the**  
 16 **pricing, and the costing supplement is on the next**  
 17 **page.**

18 Q. Okay. So my question was: Would you agree that  
 19 this document is going to provide a new costing  
 20 framework for Inland Waters going back -- the  
 21 language is from its inception of the work until  
 22 final completion.

23 **A. From the inception of the work covered by this**  
 24 **contract amendment, which is 15 Mile Road.**

25 Q. So from August 22nd or as soon as they started

1 **A. I might not have because this was signed in**  
 2 **November 2004. I might not have depending on the**  
 3 **date of the administrative order. This may have**  
 4 **been added afterwards. I'm not sure.**

5 Q. Well, it's dated well after November 2004. You  
 6 would agree with that, right?

7 **A. Right.**

8 Q. You have no reason to believe that that was  
 9 something that was done before April of 2005, do  
 10 you?

11 **A. No.**

12 Q. The signature on the bottom, do you recognize  
 13 that to be Victor Mercado's signature?

14 **A. That's his handwriting.**

15 Q. Dennis Oszust from -- he signs as the vice  
 16 president, general manager of the company, Pipe  
 17 Rehabilitation Group?

18 **A. No, that's the group within Inland Waters. The**  
 19 **company is Inland Waters Pollution Control,**  
 20 **Incorporated. The Pipe Rehab Group was a group**  
 21 **within that company.**

22 Q. Okay. Did you know Mr. Oszust?

23 **A. Yes, I've met him a number of times.**

24 Q. Did you meet him in connection with this project  
 25 or with this Amendment 2, I should say?

Page 54

Page 56

1 work thereafter -- August 22, 2004 collapse, they  
 2 start work. In April of 2005, we're now going to  
 3 go backwards and impose these -- this costing  
 4 framework; is that accurate?

5 **A. It looks like this is maybe modifying the**  
 6 **September 20th letter that Mr. Shukla wrote.**

7 Q. Who would, again, give Mr. Mercado -- let me ask  
 8 it this way: You said earlier Mr. Mercado would  
 9 have had the authority to direct Mr. Shukla to do  
 10 the first costing summary.

11 **A. Yes.**

12 Q. Would Mr. Mercado have authority, then, to do a  
 13 new costing summary?

14 **A. Yes, he would.**

15 Q. Would he need to get the mayor's approval to do  
 16 that, to the best of your knowledge?

17 **A. I don't know how much the mayor delegated that to**  
 18 **him. And I'm not sure --**

19 Q. I don't want to cut you off. Were you --

20 **A. No, go ahead.**

21 Q. Was this document something that you would have  
 22 reviewed, the letter dated April 4, 2005, or the  
 23 costing supplement that follows? Was that  
 24 something that you reviewed before it was made a  
 25 part of the contract?

1 **A. Not with this amendment. I was dealing with DWSD**  
 2 **staff on this amendment. I didn't talk to him**  
 3 **about this.**

4 Q. Were you present when this document was signed by  
 5 Mr. Mercado --

6 **A. No.**

7 Q. -- or Mr. Oszust?

8 The pages that follow, CS-1368

9 Amendment No. 2 costing supplement, there are some  
 10 initials there on the document and there's a date  
 11 of 3/17 of '05. I deposed Mr. Shukla, and he  
 12 indicated that one of those initials were his. Do  
 13 you recognize the other one?

14 **A. No. It looks like D.O., which would mean Dennis**  
 15 **Oszust, but I'm guessing.**

16 Q. In your dealings with contracts for the DWSD, had  
 17 you had occasion to see a costing supplement that  
 18 was redone like was done in this case, where  
 19 there's actually a second costing supplement that  
 20 issues for the same contract?

21 **A. No.**

22 Q. Do you know how this -- or who directed that this  
 23 was done?

24 **A. This would have to come from Mr. Mercado.**

25 Q. Did you know what the standard markup or layers

Page 57

Page 59

1 of markups were for DWSD contracts?

2 **A. It varies from contract to contract, and it's**

3 **negotiated with the contractor.**

4 Q. Was this costing supplement something you were

5 asked about when you were interviewed by the FBI?

6 **A. No.**

7 Q. I think you said you didn't --

8 **A. Actually I was interviewed by a U.S. attorney, not**

9 **an FBI --**

10 Q. I thought it was probably a bad question when I

11 said it, so thank you for correcting me. I know

12 you weren't around when it was done, this

13 April 4, 2005 costing supplement, but did you

14 have occasion to see it when it became -- or at

15 any point before retiring from the Law

16 Department?

17 **A. I don't remember seeing it. I may have -- I may**

18 **have looked at this when I was reviewing Amendment**

19 **No. 3, because typically you look at the previous**

20 **amendments in the contract to see what changes are**

21 **being made.**

22 Q. So looking at Amendment No. 3, which I think is

23 the document that we marked as 4 --

24 **A. Yes.**

25 Q. -- Exhibit 4, so Amendment No. 3, what is the

1 **A. It depends on the complexity of the project. It**

2 **can -- it can take weeks. You know, at some point**

3 **engineering staff would have to propose something**

4 **like this to the director who would have to review**

5 **it and approve it.**

6 Q. Well, in the case of Amendment 2, we know that

7 the sinkhole collapse occurred in August and we

8 don't see the -- we don't see the resolutions

9 dated until November. Is that a typical time

10 frame or would you expect to see it shorter or

11 longer than that?

12 **A. That's the time frame it took to get that**

13 **amendment written, agreed, but the contractor**

14 **actually started work before then. And by city**

15 **purchasing standards, that's actually pretty fast.**

16 Q. Okay. So Amendment 3 would have to also be

17 written, prepared, approved by everybody so --

18 **A. Yes.**

19 Q. -- it would be a matter of months between the

20 time that the discussions begin that, hey, we

21 need an Amendment 3 here until --

22 **A. It could be --**

23 Q. -- until the time you see Mayor Kilpatrick

24 signing this order?

25 **A. It could be a couple of months or a couple of**

Page 58

Page 60

1 date of that?

2 **A. The date of the special administrator order is**

3 **May 18, 2005.**

4 **MS. BADALAMENTI:** I'm going to indicate

5 that appears to be two pages on the back of

6 exhibit where they don't belong. I just noticed

7 that. If you want to pull them off, everybody --

8 they should not be on that document. It will just

9 cause confusion later on.

10 **THE WITNESS:** You can have that back.

11 **MS. BADALAMENTI:** We'll mark it

12 separate.

13 **BY MS. BADALAMENTI:**

14 Q. Do you recognize the date that Amendment 3 was

15 entered into?

16 **A. It's the date of the special administrative order,**

17 **which is May 18, 2005.**

18 Q. Do you know how far in advance of May 18, 2005,

19 this amendment would have been proposed or

20 discussed by somebody at DWSD in order for it to

21 be -- you know, in order for the order to be

22 signed on 5/18 of '05?

23 **A. I don't.**

24 Q. Is it a process that takes days or weeks or

25 months?

1 **weeks. I'm not sure. It depends on the project.**

2 Q. Okay. And Amendment 3 is issued for the purpose

3 of increasing the budget for the sinkhole

4 repairs; is that true?

5 **A. Yes.**

6 Q. The amount of the increase is --

7 **A. \$23 million.**

8 Q. -- \$23 million added to the amount of the

9 Amendment 2?

10 **A. Yeah. It's on page 3. Add 23 million, so the**

11 **new -- so the new total is 118 million.**

12 Q. Was that for work that had been done up to that

13 point and going forward, or was all of that 23

14 million still to be done?

15 **A. I don't know. It is fairly common in the city**

16 **contracting process for when a contract runs out**

17 **of money, the contractor will keep working while**

18 **the amendment putting more money into the project**

19 **is processed, but they can't get paid until the**

20 **amendment's approved. Contractor will sometimes**

21 **take on the risk of the amendment not being**

22 **approved, but in this case, it was.**

23 Q. So -- well, in this case it was approved by

24 special order, right?

25 **A. Yes.**



Page 61

Page 63

1 Q. So fair to say the contractor would know from his  
2 discussions with the mayor or Victor Mercado that  
3 the special order was going to issue to approve?  
4 **A. During the negotiation the contractor should have**  
5 **been told that there would be a special**  
6 **administrator order approving it, so if the**  
7 **contract had run out of money, they would have**  
8 **kept working knowing that they would be paid**  
9 **eventually.**  
10 Q. Would the contractor have known that a special  
11 order was the means by which Amendment 2 was  
12 approved? In other words, would they know that  
13 skipped the city council's purchasing approval  
14 process?  
15 **A. I was not involved in that discussion. I'm sure**  
16 **that that would have been discussed and they would**  
17 **have been told that, yes.**  
18 Q. Do you know what necessitated this additional  
19 \$23 million in Amendment 3?  
20 **A. I did not -- I don't know what the -- all of the**  
21 **work that was done out there. I do know that**  
22 **every time they got into the tunnel, they found**  
23 **things were deteriorating and getting worse.**  
24 Q. Did you ever ask why \$23 million more?  
25 **A. At some point I would have asked Shukla that**

1 **review -- I never reviewed the contractor**  
2 **invoices. I just -- if they told me that they**  
3 **were running out, that the budget needed to be**  
4 **increased to complete the project, I would believe**  
5 **that and do it.**  
6 Q. And who other than Mr. Shukla would give you that  
7 information?  
8 **A. Either Darryl Latimer or Mr. Mercado.**  
9 Q. Did Darryl Latimer have any discussions with you  
10 in connection with Amendment 3 about amounts that  
11 had been disallowed with respect to the sinkhole  
12 repair work?  
13 **A. No.**  
14 Q. Did anyone discuss with you before Amendment 3  
15 was drafted or executed that there were concerns  
16 about overcharges on the project?  
17 **A. No.**  
18 Q. Did you actually prepare the text of the  
19 amendment?  
20 **A. No. Those amendments are boilerplate forms that**  
21 **the contracts administration group would prepare.**  
22 **And Darryl Latimer was the head of that group at**  
23 **that time.**  
24 Q. Does this amendment extend the time and budget or  
25 just the budget?

Page 62

Page 64

1 **question, and if he said there's more work to be**  
2 **done, I would have taken his word for it.**  
3 Q. The work to be done had already at least been  
4 started at that point, correct?  
5 **A. I don't -- well, the whole project, the work that**  
6 **Inland Waters started in August, and --**  
7 Q. Of '04?  
8 **A. Of '04, and they had been working -- they and**  
9 **their subcontractors had been working out there**  
10 **continuously.**  
11 Q. So was it your understanding at the time  
12 Amendment 3 is entered into that the whole budget  
13 had been used or that the whole budget had been  
14 used and there was more money due already?  
15 **A. My understanding would have been that the current**  
16 **budget was not enough, and that they were going to**  
17 **use -- need more money to complete the work.**  
18 **Whether that was -- whether they had spent**  
19 **everything or whether they had some left, they**  
20 **were going to run out, I don't know.**  
21 Q. Was that something you customarily checked on,  
22 how much had they spent -- "We're entering into  
23 this Amendment 3 and we're preparing this  
24 document. How much has been spent so far?"  
25 **A. I generally didn't ask that question. I did not**

1 **A. This is amendment No. 4.**  
2 Q. Amendment No. 3, Exhibit No. 4.  
3 **A. Okay. Well, this just increases the budget**  
4 **without increasing the time.**  
5 Q. Were you aware of any of the communications back  
6 and forth between Mr. Shukla or Mr. Mercado or  
7 Mr. Latimer that lead to Amendment 3?  
8 **A. No.**  
9 Q. Is that something that would typically go through  
10 the Law Department?  
11 **A. No. Typically they would negotiate the contract**  
12 **and then submit the whole contract to the Law**  
13 **Department.**  
14 Q. Did you in connection with Exhibit 2 -- I'm  
15 sorry, in connection with Exhibit 3, which is  
16 marked -- which is actually Amendment 2, and the  
17 costing supplement at the back of that  
18 document -- Mr. Mercado's costing supplement  
19 dated April 4, 2005, were you aware of any drafts  
20 that had gone back and forth about that costing  
21 supplement?  
22 **A. No.**  
23 Q. Were you aware of who proposed those terms,  
24 whether it was the contractor or Inland Waters  
25 who proposed the materials?

Page 65

Page 67

1 **A. Inland Waters was the contractor, and I don't know**  
 2 **who proposed.**  
 3 Q. I'm sorry. Were you aware whether Inland Waters  
 4 proposed terms for the costing supplement or  
 5 whether it was something Mr. Mercado wanted?  
 6 **A. I don't know.**  
 7 Q. Okay.  
 8 **MS. BADALAMENTI:** Do you want to take a  
 9 break?  
 10 **MR. FAISON:** Sure.  
 11 (Off the record at 11:50 a.m.)  
 12 (Back on the record at 12:09 p.m.)  
 13 **BY MS. BADALAMENTI:**  
 14 Q. What was your involvement -- let me ask it this  
 15 way: At some point there begin to be, in the  
 16 context of that 1977 case you were talking about,  
 17 disputes between Macomb County, Oakland County  
 18 and the City of Detroit. Are you aware of that?  
 19 **A. There was a constant series of disputes.**  
 20 Q. What sort of disputes were you aware of?  
 21 **A. Mostly over sewer rates.**  
 22 Q. Over -- I'm sorry?  
 23 **A. Sewer rates that the city was charging. The**  
 24 **counties were constantly arguing that they were**  
 25 **too high.**

1 **is what the city calls a revenue department. It's**  
 2 **self-supporting off the water and sewer revenues.**  
 3 **And general fund departments are the ones that are**  
 4 **funded by tax revenues.**  
 5 Q. Do you recall a dispute involving the allocation  
 6 of the repair costs for the sinkhole?  
 7 **A. Yes.**  
 8 Q. What was the nature of that dispute?  
 9 **A. At some point Macomb County suggested that the**  
 10 **cost should be allocated to all of the customers**  
 11 **of the sewer system, and the Water and Sewerage**  
 12 **Department had allocated the full cost to Macomb**  
 13 **County.**  
 14 Q. It was determined that it was a Macomb-only  
 15 project?  
 16 **A. Yes.**  
 17 Q. And the dispute in the 1977 case wasn't with the  
 18 amount -- the total amount of the project. It  
 19 was with the allocation of it to Macomb only?  
 20 **A. Which project? Is that the sewer repair project**  
 21 **or the 800 megahertz project?**  
 22 Q. Let me ask more clearly. With respect to the  
 23 2004 sewer collapse and the repairs, that  
 24 project, was the dispute in the 1977 case limited  
 25 to whether or not the repair costs should be

Page 66

Page 68

1 Q. Was there other disputes that arose in the  
 2 context of that 1977 case? Let me ask it this  
 3 way: Do you recall a dispute over the radio  
 4 system?  
 5 **A. Yes.**  
 6 Q. What do you recall about that?  
 7 **A. The city built -- what happened, the Federal**  
 8 **Communications -- the Federal Communications**  
 9 **Commission reallocated radio frequencies and**  
 10 **required all local governments and governments to**  
 11 **switch their radio communications to the 800**  
 12 **megahertz band. So the city built a new radio**  
 13 **communications system for all -- that was to be**  
 14 **used by all departments that used two-way radios**  
 15 **if their vehicles to communicate -- police, fire,**  
 16 **Department of Public Works and the Detroit Water**  
 17 **and Sewerage Department. And the counties,**  
 18 **Oakland, Macomb and Wayne County, complained that**  
 19 **the city allocated too much of the cost to the**  
 20 **Water and Sewerage Department and too little to**  
 21 **what were collectively called the general fund**  
 22 **departments.**  
 23 Q. The general fund departments were City of Detroit  
 24 departments?  
 25 **A. Yeah. Basically the Water and Sewerage Department**

1 allocated to Macomb only?  
 2 **A. There came a time eventually when Macomb**  
 3 **questioned the total cost, but the initial dispute**  
 4 **was just over the allocation.**  
 5 **MR. FAISON:** Just a minute. Are we  
 6 talking about 1997 or 2004?  
 7 **MS. BADALAMENTI:** I'm talking about the  
 8 2004 repair costs.  
 9 **THE WITNESS:** 2004 collapse, there was  
 10 a dispute in which Macomb County suggested that  
 11 the project -- that the cost of the repair should  
 12 be spread over other communities served by the  
 13 Detroit sewage system and not just Macomb County.  
 14 **BY MS. BADALAMENTI:**  
 15 Q. The Judge Feikens made a determination on that  
 16 question of whether or not it's a Macomb-only  
 17 project or not, didn't he?  
 18 **A. He did. Mr. -- I read the opinion, I think,**  
 19 **Tuesday of this week, earlier, yeah.**  
 20 Q. Was that the first time that you had read it?  
 21 **A. I probably -- I'm sure I read it when he issued**  
 22 **it.**  
 23 Q. Were you the liaison between DWSD and the  
 24 attorneys representing DWSD --  
 25 **A. Yes.**

Page 69

Page 71

1 Q. -- in that lawsuit?  
 2 Was there anybody else from your  
 3 department who was involved?  
 4 **A. By 2004, yeah, there was lawyer named Laurie**  
 5 **Koester who was working with me.**  
 6 Q. Can you say that name again.  
 7 **A. K-o-e-s-t-e-r, pronounced "coaster," but she had**  
 8 **just started working with me and she really wasn't**  
 9 **up to speed.**  
 10 Q. And the attorneys -- the outside counsel for the  
 11 city in that case was Mark Jacobs; is that right?  
 12 **A. Mark Jacobs and a partner of his named Marilyn**  
 13 **Peters, and they may have used Bob Franzinger,**  
 14 **F-r-a-n-z-i-n-g-e-r, on that case. I'm not sure.**  
 15 Q. And Marilyn Peters was the litigation counsel and  
 16 Mark Jacobs was sort of the counsel who handled  
 17 the contracting or negotiations; is that fair?  
 18 **A. Mark -- Mark is an environmental law specialist at**  
 19 **Dykema. He's in their environmental department,**  
 20 **but he did general counsel and contracting work**  
 21 **along with me. Marilyn Peters is a litigator with**  
 22 **Dykema.**  
 23 Q. And I think you said earlier you don't litigate?  
 24 **A. I stopped doing litigation in the early 90s. I**  
 25 **just transitioned into more transactional work.**

1 total costs on the repair project?  
 2 **MR. FAISON:** Just a minute.  
 3 **THE WITNESS:** I'm a little confused.  
 4 **MR. FAISON:** Object to the question.  
 5 There's been no testimony about a lawsuit per se,  
 6 not yet.  
 7 **BY MS. BADALAMENTI:**  
 8 Q. Okay. In the context of that 1977 case and the  
 9 claims that Macomb asserted regarding the  
 10 allocation of those repair costs to it as opposed  
 11 to spread out to all communities, did you provide  
 12 any documents to Macomb or to your counsel on  
 13 that case to be provided to Macomb?  
 14 **A. I did not, no.**  
 15 Q. Are you aware of whether or not any documents  
 16 breaking down the repair costs were provided?  
 17 **A. I did not do any active work on that case. Mark**  
 18 **and Marilyn did that.**  
 19 Q. So you would not have been involved with the  
 20 creation of any spreadsheets or other documents  
 21 that were provided to Macomb that itemized the  
 22 total costs?  
 23 **A. No.**  
 24 Q. Okay. What other disputes were involved in the  
 25 1977 case -- let me see if I can streamline it

Page 70

Page 72

1 Q. Okay. You said at one point Macomb did question  
 2 the total amount of the repairs in connection  
 3 with the 1977 lawsuit. When was that?  
 4 **A. It wasn't really in connection with the lawsuit,**  
 5 **but at some point they got -- they had an engineer**  
 6 **look at it and asked him for an opinion on if the**  
 7 **cost could have been lower. He said that it could**  
 8 **have been lower.**  
 9 Q. Was that after the federal indictment came out?  
 10 Do you remember -- let me just make it clear --  
 11 after the first superseding indictment came out  
 12 against Kwame Kilpatrick, Victor Mercado and  
 13 others?  
 14 **A. I don't remember the date of the first superseding**  
 15 **indictment. I saw -- I think -- I saw his report**  
 16 **when I was reviewing documents in getting ready**  
 17 **for this dep, and I think it was 2011 or something**  
 18 **like that, which would have been after the**  
 19 **indictment.**  
 20 Q. At any time prior to that do you recall Macomb  
 21 questioning the total of project costs?  
 22 **A. No.**  
 23 Q. Do you remember providing information for that  
 24 lawsuit to Mark Jacobs or Marilyn Peters  
 25 regarding the total costs or the breakdown of the

1 for you. There was questions about phantom  
 2 improvements that were included within the rates;  
 3 is that right?  
 4 **A. That was not in part of the 1977 -- the way the**  
 5 **1977 lawsuit was administered, there were a series**  
 6 **of consent judgments that were entered by Judge**  
 7 **Feikens, so every time there was a dispute between**  
 8 **one of the counties and DWSD, rather than filing a**  
 9 **lawsuit, they would file a motion in that lawsuit**  
 10 **as a way of keeping it in front of Judge Feikens.**  
 11 **So that was -- it was a unique procedure, unique**  
 12 **to Judge Feikens. You don't file a complaint.**  
 13 **You have to file a motion or something. But**  
 14 **that's the way it was done. And the phantom**  
 15 **projects issue was not raised. It was sort of**  
 16 **raised when we were negotiating the transfer of**  
 17 **the interceptor to Macomb and Oakland counties,**  
 18 **which was part of the resolution -- ultimate**  
 19 **resolution of that lawsuit. But Craig Hupp, I**  
 20 **think, who was Macomb County's lawyer in those**  
 21 **negotiations created the word "phantom projects."**  
 22 Q. And phantom project, as it was referred to at  
 23 that time, was a project that was included in  
 24 part of the rates that the local communities were  
 25 paying the DWSD, but the project had not actually

Page 73

Page 75

1 been constructed?

2 **A. That was the way it was explained by Craig. And**

3 **there were a couple of projects that were put into**

4 **the capital improvement program and put into the**

5 **rates that were charged to Macomb County that**

6 **never got built, and part of the price negotiation**

7 **involved in the transfer -- the transfer agreement**

8 **was pulling those -- identifying those projects,**

9 **pulling them out -- back out of the rate base and**

10 **giving Macomb County a credit for them on the**

11 **purchase price.**

12 Q. Was that credit referred to as the global

13 settlement amount?

14 **A. The global -- no, the global settlement is a**

15 **settlement agreement that the parties entered into**

16 **with Judge -- before Judge Feikens to resolve a**

17 **number of issues that were out there. That was --**

18 **and part of that was that the community -- the**

19 **City of Detroit and Oakland and Macomb counties**

20 **would negotiate the sale of the interceptor to**

21 **drainage districts to be created by those two**

22 **counties, and the price resolution was done in the**

23 **context of the transfer agreement. I don't think**

24 **it -- I don't think it was in the settlement**

25 **agreement. I think it was worked out as we were**

1 Q. There was a dispute over whether or not the bond

2 interest rate could be added onto by DWSD and

3 there was a claim that DWSD was trying to make a

4 profit on that?

5 **A. There was a claim by Macomb County that the**

6 **interest rate was higher than it should have been,**

7 **and they asked that that interest rate be reduced,**

8 **and that was done in the context of the**

9 **negotiation of the purchase price of the sewer,**

10 **and they did get a credit on that. Detroit agreed**

11 **to recalculate the interest rate, get a lower**

12 **rate, and give them a credit for the difference.**

13 Q. And was that credit part of the global

14 settlement?

15 **A. No, that was part -- well, the agreement**

16 **transferring the sewer was one component of the**

17 **global settlement, but it's a separate contract.**

18 **There's a settlement agreement that says we will**

19 **negotiate the transfer of the interceptor, and**

20 **then there was the actual contract transferring**

21 **the interceptor. So it's two separate documents.**

22 Q. The discussions about the first component, which

23 was that we're going to agree to transfer the

24 Macomb Interceptor system to Macomb --

25 **A. Yes.**

Page 74

Page 76

1 **setting the price to be paid for the sewer.**

2 Q. So the settlement agreement was essentially an

3 agreement to reach an agreement on the purchase?

4 **A. That was part of it. We also resolved the**

5 **disputes over the cost allocation for the 800**

6 **megahertz project and a couple of other disputed**

7 **issues as well.**

8 Q. Was the settlement agreement the means by which

9 the cost allocation of 15 Mile and Hayes was

10 resolved or was that resolved in its entirety by

11 Judge Feikens' ruling?

12 **A. Judge Feikens resolved the allocation issue, that**

13 **it was Macomb County only. And I don't recall**

14 **Macomb County ever filing a formal complaint about**

15 **the total cost of it. At some point Mr. Marrocco**

16 **showed us -- shared with us the report that said**

17 **it could have been done for a lower cost, but I**

18 **don't recall him ever filing a formal litigation**

19 **pleading over that.**

20 Q. In the '77 case?

21 **A. Or in any case, I don't think.**

22 Q. There was also a dispute in the 1977 lawsuit

23 about the interest rate that was being charged by

24 DWSD. Are you familiar with that?

25 **A. Yes.**

1 Q. -- that -- what led to that? Was it all of these

2 disputes or was it the interest rate?

3 **A. It was the whole collective thing, and another**

4 **thing that led -- that drove that was after the**

5 **sewer collapse had been repaired, the city hired**

6 **an engineering firm to do a survey and inspection**

7 **of the whole interceptor -- the entire length of**

8 **it. And they came back with a report that said**

9 **there was deterioration throughout the whole**

10 **length of all of the interceptors, and with an**

11 **estimated repair cost of over \$100 million, and**

12 **that was what really started the conversation**

13 **about the interceptor transfer going.**

14 Q. Was that consultant NTH Consultants?

15 **A. Yes.**

16 Q. Was that report complete by the time that the

17 settlement agreement is entered into?

18 **A. I don't know. It was certainly complete by the**

19 **time the sewer transfer contract was completed. I**

20 **don't know if it was completed by the time the**

21 **global settlement agreement was signed, but it was**

22 **certainly done by the time the sewer transfer**

23 **contract was signed.**

24 **MARKED FOR IDENTIFICATION:**

25 **DEPOSITION EXHIBIT 5**

Page 77

Page 79

1 12:25 p.m.

2 **BY MS. BADALAMENTI:**

3 Q. Okay. I've marked as Exhibit 5 the document  
4 titled Settlement Agreement. Do you recognize  
5 that document?

6 **A. Yeah, this is the document we referred to as the  
7 global settlement agreement.**

8 **MR. FAISON:** Counsel, I have a  
9 question. Are you purporting that this document,  
10 Exhibit 5, is the complete settlement agreement.

11 **MS. BADALAMENTI:** I'm asking the  
12 witness.

13 **THE WITNESS:** I think there was some  
14 exhibits to it. There are exhibits referenced in  
15 this document that are not attached to the exhibit  
16 that you handed me.

17 **BY MS. BADALAMENTI:**

18 Q. Okay. This document was designed to resolve  
19 claims in the 1977 lawsuit by way of an agreement  
20 -- to reach an agreement on the purchase by  
21 Macomb of the sewer system; is that right?

22 **A. Let me correct something that I just said. The  
23 interest rate adjustment that I say was included  
24 in the sewer transfer agreement is also in this  
25 settlement agreement. I had forgotten that. But**

1 **A. Yes.**

2 Q. Do you know whether that Letter of Intent was  
3 ever executed?

4 **A. I believe it was.**

5 Q. Just to make the record clear, the document that  
6 I handed you that's titled Settlement Agreement  
7 has been marked as Exhibit 5; is that correct?

8 **A. Yes.**

9 **MARKED FOR IDENTIFICATION:**

10 DEPOSITION EXHIBIT 6

11 12:30 p.m.

12 **BY MS. BADALAMENTI:**

13 Q. The document that I've marked as Exhibit 6 is  
14 titled the Macomb Acquisition Agreement. It's  
15 dated September 2nd of 2010. Do you recognize  
16 that document?

17 **A. Yeah. This is -- it's got an Exhibit A marked all  
18 over it, too. I assume that's from something  
19 else.**

20 Q. Short of that Exhibit A, do you recognize the  
21 document?

22 **A. Yeah, this is the contract under which the City of  
23 Detroit transferred the Macomb Interceptor to the  
24 the Macomb Interceptor Drain Drainage District and  
25 the County of Macomb.**

Page 78

Page 80

1 **it's in here. The amount was \$17,050,000, and it  
2 was given to Macomb County as a credit on the  
3 purchase price.**

4 Q. Were you involved in the negotiation of those  
5 credits?

6 **A. I was involved in the negotiation of the  
7 settlement agreement. The credits on the interest  
8 rates were done -- were not done by me. The  
9 negotiators for DWSD on that issue were Bart  
10 Foster and Mark Jacobs.**

11 Q. At the time of the settlement agreement did you  
12 understand that the price for the purchase of the  
13 Macomb system was going to be calculated by  
14 making a determination of the system debt?

15 **A. Yes. There was a general agreement among Detroit,  
16 Oakland County and Macomb County that the purchase  
17 price would be the outstanding bond debt on that  
18 interceptor, and then adjusted by the interest  
19 rate credit and the so-called phantom projects.  
20 Those would be resolved by giving credits on the  
21 amount of the outstanding debt. And that's how we  
22 worked out the purchase price.**

23 Q. The settlement agreement refers to a Letter of  
24 Intent. Are you familiar with the Letter of  
25 Intent?

1 **MR. FAISON:** Counsel, again, does this  
2 document purport to be the complete document?

3 **MS. BADALAMENTI:** I'm asking the  
4 witness.

5 **MR. FAISON:** Well, let me say for the  
6 record, I mean, you produced the document. You,  
7 produced the document. You identified it. If  
8 it's not a complete document and you don't want to  
9 say so, then you have to ask the witness whether  
10 this is a complete document or not.

11 **MS. BADALAMENTI:** Well, generally the  
12 attorney asking the questions decides what  
13 questions are appropriate to ask, but I haven't  
14 asked the witness anything other than whether or  
15 not he recognizes the document, so why don't you  
16 give me opportunity to ask him about the document,  
17 and then if you're not satisfied, you can follow  
18 up.

19 **MR. FAISON:** If you're going to  
20 represent a document to be something, I'm entitled  
21 to at least understand what your representation  
22 is.

23 **MS. BADALAMENTI:** Okay. Your objection  
24 is on the record.

25 **THE WITNESS:** What's the question now?

<p style="text-align: right;">Page 81</p> <p>1 <b>BY MS. BADALAMENTI:</b>  2 Q. Do you recognize this document to be the Macomb  3 Acquisition Agreement?  4 A. <b>Yes.</b>  5 Q. Okay. Do you believe there to be any schedules  6 or exhibits that are missing or would you even be  7 able to answer that?  8 A. <b>I can't answer that. There are a lot of -- this</b>  9 <b>one has a number of schedules and exhibits with</b>  10 <b>it, and I don't know if it's all of them, but</b>  11 <b>certainly most of them.</b>  12 Q. Were you part of the negotiations that led to  13 this acquisition agreement being executed?  14 A. <b>Yes, I was.</b>  15 Q. Were you part of the disclosures that were made  16 in connection with the execution of this  17 document?  18 A. <b>I don't know what type of disclosures you are</b>  19 <b>referring to?</b>  20 <b>MR. FAISON:</b> Can I just ask for a  21 moment. Did this document get marked as  22 Exhibit 6?  23 <b>MS. BADALAMENTI:</b> It did.  24 <b>MR. FAISON:</b> Thank you.  25 <b>BY MS. BADALAMENTI:</b></p>	<p style="text-align: right;">Page 83</p> <p>1 <b>the same documents and they -- they're the two who</b>  2 <b>ultimately did most of the negotiating, looked at</b>  3 <b>the final numbers.</b>  4 Q. I took the deposition of Bart Foster, so let me  5 try to streamline some of these questions.  6 A. <b>Okay.</b>  7 Q. It's my understanding that Bart Foster was  8 provided with some project information and a  9 project total for any project that was undertaken  10 to repair, construct the facilities that were  11 going to be a part of this purchase. Is that a  12 fair characterization?  13 A. <b>I would assume that he had that information, yes.</b>  14 Q. Do you know whether he was provided with project  15 files or invoices or ever reviewed the legitimacy  16 of charges?  17 A. <b>I don't know if he did that or not.</b>  18 Q. Do you know whether it was his custom and  19 practice to do that for Detroit?  20 A. <b>Bart was not involved in administering or</b>  21 <b>overseeing construction projects in any way, so he</b>  22 <b>probably looked at -- I'm not going to speculate,</b>  23 <b>but he was not involved in managing the repair</b>  24 <b>work or overseeing any other construction projects</b>  25 <b>for the department.</b></p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Let me ask it a different way. There was due  2 diligence that was contemplated by this  3 agreement. Are you familiar with that?  4 A. <b>Yes.</b>  5 Q. Were you part of any of the due diligence under  6 taken by Macomb or Detroit in connection with  7 this agreement?  8 A. <b>The due diligence was undertaken by Macomb. I</b>  9 <b>don't recall Detroit doing any at all. And I was</b>  10 <b>involved in all of the negotiation meetings that</b>  11 <b>led to this document. If there were separate due</b>  12 <b>diligence meetings, I don't think I was part of</b>  13 <b>those.</b>  14 Q. You had said that Bart Foster was involved in  15 this process. Do you know what his involvement  16 was?  17 A. <b>Bart is a water and sewerage rate consultant.</b>  18 <b>He's the one that creates the water and sewage</b>  19 <b>rates for the city. He's very involved in the</b>  20 <b>department's finances and rate setting. And he is</b>  21 <b>also works on the city's bond issues. He was the</b>  22 <b>one who really went into the bond documents and</b>  23 <b>determined what the amount of the outstanding debt</b>  24 <b>was. And then he had some meetings with Macomb</b>  25 <b>County's lawyer, Craig Hupp, who have looked at</b></p>	<p style="text-align: right;">Page 84</p> <p>1 Q. In the course of calculating that system debt  2 total, were you asked to provide any project  3 files to Bart or to Macomb County?  4 A. <b>No.</b>  5 Q. Were you asked to provide any project information  6 or project totals to Macomb County?  7 A. <b>No.</b>  8 Q. Do you know that Mr. Shukla provided some  9 information regarding projects?  10 A. <b>I'm not aware of that.</b>  11 Q. Do you know who provided Bart Foster with the  12 information that he needed?  13 A. <b>It wasn't me. I don't know who he talked to.</b>  14 Q. The document -- the negotiation surrounding this  15 purchase went on for a number of years, as I  16 understand. Is that your understanding?  17 A. <b>I don't know about years, but certainly several</b>  18 <b>months.</b>  19 Q. The document is dated September 2nd, 2010. How  20 long before that do you think the negotiations  21 began?  22 A. <b>We started the negotiation sometime in 2009. I</b>  23 <b>don't remember exactly when, but --</b>  24 Q. The settlement agreement that's in front of you  25 is marked May 12, 2009. Would the negotiations</p>

Page 85

1 regarding the purchase of the system have  
2 predated that?  
3 **A. I think this -- they would have started -- I think**  
4 **they would have started after this.**  
5 Q. The settlement agreement contemplated purchase of  
6 the system; is that right?  
7 **A. Yes.**  
8 Q. And how long did the negotiations go on prior --  
9 with respect to the execution of the settlement  
10 agreement and those terms?  
11 **A. Several months.**  
12 Q. Okay. Into 2008 or before that?  
13 **A. Oh, they would have started in 2008, sure.**  
14 Q. 2007 were there discussion about Macomb's  
15 purchase of the system?  
16 **A. I don't remember. The real catalyst that -- my**  
17 **recollection is that the catalyst that started the**  
18 **discussion about transferring the interceptor was**  
19 **the NTH report on the condition of it, so it would**  
20 **have been after that report was provided to the**  
21 **counties.**  
22 Q. There is a schedule 3.8 within these documents.  
23 I'll let you get to it. It's marked on the top  
24 page ID 3613. Have you seen this document?  
25 **A. Yes.**

Page 86

1 Q. Were you involved in the preparation of this  
2 document?  
3 **A. This was put together primarily by Craig Hupp and**  
4 **Bart Foster. I was not involved in those**  
5 **meetings.**  
6 Q. There's a line item for CS-1368, the 2004  
7 repairs, and there's a total of in excess of  
8 \$54 million. Do you see that there?  
9 **A. Yes.**  
10 Q. Do you know how that total was arrived at?  
11 **A. No, I don't.**  
12 Q. Do you know what disclosures were made with  
13 respect to that amount?  
14 **A. No, I don't.**  
15 Q. Were there any questions from Macomb County  
16 regarding that amount?  
17 **A. Not to me.**  
18 Q. Are you aware of whether or not there were any  
19 representations made to Macomb County by anyone  
20 regarding CS-1368?  
21 **A. No. I mean, I didn't make any. I don't know what**  
22 **anybody else might have said.**  
23 Q. Were any of these -- let me take you back. On  
24 page 2 of 25 of the acquisition agreement there's  
25 paragraph 1.10. Do you see that?

Page 87

1 **A. Okay.**  
2 Q. "'Detroit's knowledge' shall mean the actual  
3 knowledge of its Director, its Assistant  
4 Corporation Counsel assigned to DWSD matters, its  
5 Assistant Chief of Engineering or its Engineering  
6 Support Manager Craig Stanley." Do you see that?  
7 **A. Yes.**  
8 Q. Who was the director being referred to in that  
9 paragraph?  
10 **A. At that point the director of the department was**  
11 **Pamela Turner.**  
12 Q. And when did Pamela Turner become the director?  
13 **A. After Victor Mercado resigned. I don't remember**  
14 **the date. But she was the deputy director under**  
15 **Mercado. She -- she came in after Mercado.**  
16 Q. Was there an interim director that served  
17 somewhere in there, too?  
18 **A. Yeah.**  
19 Q. Who was that?  
20 **A. Anthony Adams.**  
21 Q. Anyone else?  
22 **A. No. My recollection is that after Mercado -- Pam**  
23 **Turner, I believe, was the deputy director under**  
24 **Mercado, and when he resigned, Anthony Adams**  
25 **became interim director for about six months. And**

Page 88

1 **then Pam became director.**  
2 Q. How long did Pam serve as the director?  
3 **A. Oh, three or four years.**  
4 Q. And who --  
5 **A. She retired after I did.**  
6 Q. Okay.  
7 **A. Wait. I'm sorry. She retired -- she retired**  
8 **about six months before I did.**  
9 Q. Did someone else take her position that you knew  
10 of?  
11 **A. Yeah.**  
12 Q. Who was that?  
13 **A. Susan McCormick, I think, is her name.**  
14 Q. The assistant corporation counsel assigned to  
15 DWSD matters referred to in this paragraph, would  
16 that be you?  
17 **A. Yes.**  
18 Q. The assistant chief of engineering at that time  
19 would have been who?  
20 **A. I don't remember.**  
21 Q. And --  
22 **A. One of Shukla's assistants, but I'm not sure what**  
23 **is.**  
24 Q. Shukla was chief of engineering at the time?  
25 **A. He was the assistant director at that time --**

<p style="text-align: right;">Page 89</p> <p>1 <b>assistant director in charge of engineering. The</b>  2 <b>department had four or five assistant directors in</b>  3 <b>those days.</b>  4 Q. Victor Mercado resigned in 2008; is that right?  5 <b>A. I believe so, yes.</b>  6 Q. In connection with the 1977 lawsuit, did you  7 become aware at any point of Victor having  8 requested from Judge Feikens that he be appointed  9 as special administrator in the place of  10 Mr. Kilpatrick?  11 <b>A. No.</b>  12 Q. Do you know what the circumstances of Victor's  13 resignation were?  14 <b>A. No.</b>  15 Q. Do you know the reason he gave for resigning?  16 <b>A. No.</b>  17 Q. Do you know if he was asked to resign?  18 <b>A. I don't.</b>  19 Q. Do you know if there was tension between  20 Mr. Mercado and Mayor Kilpatrick at the time he  21 resigned or prior to?  22 <b>A. I don't know.</b>  23 Q. In your capacity as assistant corporation counsel  24 on the DWSD matters, have you had occasion to  25 have meetings with Mr. Ferguson --</p>	<p style="text-align: right;">Page 91</p> <p>1 knowledge, right?  2 <b>A. Yes.</b>  3 Q. And prior to this, September 2nd, 2010 date, you  4 had been interviewed by a U.S. attorney in  5 connection with 1368; is that true?  6 <b>A. Not in connection with 1368. In connection with</b>  7 <b>general city contracting procedures. They never</b>  8 <b>asked me specific questions about 1368.</b>  9 Q. Were you ever present when Mr. Shukla was  10 interviewed?  11 <b>A. No.</b>  12 Q. The documents that you were asked to put together  13 for the grand jury subpoenas, were those  14 documents including documents related to 1368?  15 <b>A. I was never asked to put together documents in</b>  16 <b>response to a grand jury subpoena. I was shown</b>  17 <b>the subpoena and asked by either Mr. Mazurek or</b>  18 <b>Mr. Keelean where in the Water Board Building</b>  19 <b>those files would be and who would be the</b>  20 <b>custodian of them. They're the ones who actually</b>  21 <b>went and found the documents and put together the</b>  22 <b>document packages for the grand jury.</b>  23 Q. Was that in inquiry with respect to 1368?  24 <b>A. I don't remember the specific contracts that were</b>  25 <b>mentioned in the subpoenas. I would have known it</b></p>
<p style="text-align: right;">Page 90</p> <p>1 <b>A. Never.</b>  2 Q. -- Bobby Ferguson?  3 <b>A. No.</b>  4 Q. Other than the instances that you told me, did  5 you have discussions with Inland?  6 <b>A. No.</b>  7 Q. The representations in this --  8 <b>A. I'll take that back. Inland Waters has done many</b>  9 <b>contracts over the years, and I had conversations</b>  10 <b>with Dennis Oszust about other projects. I didn't</b>  11 <b>deal with him directly on this one.</b>  12 Q. Okay. I'll take you to paragraph 3.7 of the  13 acquisition agreement. Paragraph 3.7 provides  14 "Except as set forth in Schedule 3.7...there is  15 no action, suit or proceeding pending or, to  16 Detroit's Knowledge, threatened against or  17 affecting Detroit before any governmental entity  18 in which there is a reasonable possibility of an  19 adverse decision which could have a material  20 adverse effect upon the ability of Detroit to  21 perform its obligations." Do you see that?  22 <b>A. Yes.</b>  23 Q. "...or which in any manner questions the validity  24 of this agreement." The capitalized term "to  25 Detroit's Knowledge" would include your</p>	<p style="text-align: right;">Page 92</p> <p>1 <b>at the time, but I have honestly forgotten all</b>  2 <b>that.</b>  3 Q. Paragraph 3.8 Disclosure of System Debt, do you  4 see that paragraph?  5 <b>A. Yes.</b>  6 Q. The last sentence of that paragraph, "None of the  7 written data or information furnished or made  8 available to Macomb County by Detroit as part of  9 the due diligence," do you know what material was  10 furnished to Macomb County as part of the due  11 diligence?  12 <b>A. No, I don't.</b>  13 Q. Would Mr. Shukla or anybody else who's included  14 within that category of Detroit's knowledge know  15 what documents were provided?  16 <b>A. Shukla was not on the negotiating team for this</b>  17 <b>acquisition agreement, so it would not have been</b>  18 <b>him. The due diligence mostly related to the</b>  19 <b>finances, so that would have been Bart Foster.</b>  20 Q. Paragraph 5.3 of this agreement provides that  21 Detroit shall promptly inform the Macomb County  22 and MID of any claims which it becomes aware that  23 might reasonably be expected to become the  24 subject of litigation affecting the Macomb  25 system. Did you make any disclosures to Macomb</p>



Page 93

Page 95

1 County about claims or threatened claims which  
2 you were aware at that point?  
3 **A. We had a couple of lawsuits arising out of the**  
4 **sewer collapse which were disclosed to Macomb**  
5 **County during the negotiations, and there is a**  
6 **second later on about retained liabilities. There**  
7 **were property damage lawsuits by people who owned**  
8 **property adjacent to the sewer collapse, and one**  
9 **of them I -- we settled both of them. One of them**  
10 **I know we settled before this document was signed.**  
11 **The other one was -- I don't remember if we did it**  
12 **before or after, but Detroit -- that was the**  
13 **lawsuit with the homeowners whose backyards were**  
14 **at the bottom of the hole. There were about ten**  
15 **of them. DWSD settled those. And I don't**  
16 **remember if that was done before or after this**  
17 **lawsuit was signed, but DWSD kept that liability**  
18 **and paid the settlement.**  
19 **Q. Other than those disclosures, did you make any**  
20 **other disclosures to Macomb County in accordance**  
21 **with this paragraph?**  
22 **A. No, I don't recall any. No. Those were the**  
23 **claims we were aware of, and by the time this was**  
24 **signed, the statute of limitations for filing**  
25 **claim -- lawsuits for tort -- statute of**

1 **actually was, and Detroit would reimburse them for**  
2 **that cost.**  
3 **Q. Did you become aware of before you retired a**  
4 **claim that was asserted by the City of Detroit**  
5 **against the contractors and subcontractors**  
6 **involved in 1368?**  
7 **A. Yes.**  
8 **Q. What do you know about that?**  
9 **A. What I know about that is that at some point**  
10 **somebody in the city -- and I think it was the**  
11 **director of the Law Department, determined**  
12 **after -- I think this was after the convictions in**  
13 **the criminal prosecution of Mayor Kilpatrick and**  
14 **Bobby Ferguson and Victor Mercado, that there was**  
15 **a possibility of suing those companies for the**  
16 **amounts that they were paying in bribes and**  
17 **kickbacks, and my involvement in that was**  
18 **Ms. Crittendon asked me to sit on the interviews**  
19 **with the law firms that she was considering hiring**  
20 **to do that work. And so I sat in on interviews**  
21 **with about four different law firms, and**  
22 **Ms. Crittendon made her selection. And then those**  
23 **cases were filed, and at that point I was getting**  
24 **ready to retire, and I wasn't much involved in the**  
25 **cases that were filed.**

Page 94

Page 96

1 **limitations for tort lawsuits in Michigan is three**  
2 **years, so by this time this was done, the -- well,**  
3 **okay. The statute of limitations for those had**  
4 **run out, if there were any others that were**  
5 **pending out there.**  
6 **The other thing that was out there that**  
7 **we became aware of during this negotiation and**  
8 **during -- which actually was discovered, I think,**  
9 **by NTH when they did their survey of the whole**  
10 **sewer is that back in the early 1960s when the**  
11 **sewer was built, there were times when the tunnel**  
12 **boring machine that was 50 feet underground**  
13 **strayed out of the path of the easement, and there**  
14 **were several parts -- segments of that sewer**  
15 **system where the sewer was outside the scope of**  
16 **the easement, which means it was a trespass. And**  
17 **we certainly notified them of that. They got that**  
18 **information when they had the NTH report. And**  
19 **there was an agreement, which I think is spelled**  
20 **out in here, in the agreement. We weren't going**  
21 **to hold up the agreement to the contract to**  
22 **correct all the easements. There was an agreement**  
23 **that Macomb County would take responsibility for**  
24 **obtaining the easements for the -- Macomb County**  
25 **would obtain new easements for where the sewer**

1 **Q. During that process did you come to learn the**  
2 **amount that Detroit would claim was overcharged**  
3 **on 1368 or used or paid out in the kickbacks?**  
4 **A. No. I was just involved in interviewing the law**  
5 **firms. I think I wrote the legal services**  
6 **contract for Miller Canfield after Ms. Crittendon**  
7 **selected them, but after that, I was out of it.**  
8 **Q. What other firms were interviewed other Miller**  
9 **Canfield?**  
10 **A. Dykema Gossett, and there were two others and I**  
11 **don't remember -- I think Butzel Long might have**  
12 **been one of them, and there -- there was another**  
13 **one, and I don't remember who it was. I seem to**  
14 **remember interviewing four law firms.**  
15 **Q. Did you interview Bodman?**  
16 **A. I don't think they applied for it. That would**  
17 **have been a real conflict of interest given their**  
18 **representation of Macomb County. No, I don't**  
19 **think they were on the list.**  
20 **Q. Did you learn before your retirement that Detroit**  
21 **had recovered in excess of -- I should say at**  
22 **least \$7 million in settlements with the**  
23 **contractors and subcontractors they had asserted**  
24 **those claims against?**  
25 **A. I think those settlements came after I retired. I**

Page 97

Page 99

1 was not involved in those cases in any way.  
 2 Q. The acquisition agreement, and in particular,  
 3 schedule 3.8 provides or has Macomb County paying  
 4 for the entire cost of the sinkhole repair  
 5 project. Would you agree with that?  
 6 A. This just has a number on it which is higher than  
 7 the total price of the contract amendment,  
 8 although, as I said, the contract with Inland  
 9 Waters covered more than just this work.  
 10 Q. Do you understand the sinkhole repair to have  
 11 cost more -- total of the repairs to have been  
 12 more than \$54 million?  
 13 A. No, it's my understanding that that was the total  
 14 cost.  
 15 Q. Okay. And you're unfamiliar with the settlements  
 16 between Detroit and the contractors and  
 17 subcontractors?  
 18 A. I was not involved in those at all.  
 19 Q. Just so we have a good record, I'm going to mark  
 20 this as Exhibit 7.  
 21 MARKED FOR IDENTIFICATION:  
 22 DEPOSITION EXHIBIT 7  
 23 12:53 p.m.  
 24 BY MS. BADALAMENTI:  
 25 Q. Is this the Letter of Intent -- did I say I

1 don't remember their names.  
 2 Q. Did you have counsel with you?  
 3 A. Yeah, Ed -- well, the interview took place in Ed  
 4 Keelean's office, and he was there.  
 5 Q. Did you and Ed Keelean discuss who else had been  
 6 interviewed through that point?  
 7 MR. FAISON: I'm sorry, I didn't hear  
 8 the question.  
 9 BY MS. BADALAMENTI:  
 10 Q. Did you and Ed Keelean discuss who else had been  
 11 interviewed by these same individuals?  
 12 A. No. He -- Mr. Keelean sat in on a number of  
 13 interviews with city employees with the federal  
 14 investigators, and he did not share their names  
 15 with me.  
 16 MS. BADALAMENTI: I think I might be  
 17 done, but if I could just have a couple minutes.  
 18 MR. FAISON: Sure.  
 19 (Off the record at 12:56 p.m.)  
 20 (Back on the record at 12:59 p.m.)  
 21 BY MS. BADALAMENTI:  
 22 Q. Do you recall any of the agents that interviewed  
 23 you to be Carol Paszkiewicz?  
 24 A. It was Paszkiewicz, yes. She was one.  
 25 Q. Do you recall Mark Chutkow interviewing you from

Page 98

Page 100

1 marked it as Exhibit 7? Is this the Letter of  
 2 Intent we were referring to earlier?  
 3 A. This is the Letter of Intent, although this copy  
 4 is not signed.  
 5 Q. But do you believe it was signed?  
 6 A. My recollection is that it was, but I don't see a  
 7 signed copy here. Maybe it wasn't. My  
 8 recollection is that it was, but --  
 9 Q. Section 9, Conduct of Operations, refers to in  
 10 several paragraphs that you were to obtain the  
 11 consent of the transferee to any -- in certain  
 12 circumstances. In particular, paragraph 9(d)  
 13 provides obtaining consent of the transferee to  
 14 any extraordinary transaction or any transaction  
 15 which is not at arm's length with any person or  
 16 entity, in either case relating to the property."  
 17 Did you ever obtained Macomb County's consent to  
 18 any extraordinary transaction or transaction not  
 19 at arm's length?  
 20 A. I did not.  
 21 Q. Who were you interviewed by at the United States  
 22 Attorney's Office? Who were you interviewed by?  
 23 A. It was an assistant U.S. attorney and an  
 24 investigator from the Environmental Protection  
 25 Agency's Inspector General, a man and a woman. I

1 the U.S. Department of Justice?  
 2 A. I don't remember that name. It might have been  
 3 him. I don't remember. But I do remember  
 4 Ms. Paszkiewicz.  
 5 Q. Looking for a final time at Exhibit 7, the Letter  
 6 of Intent, the Letter of Intent requires that you  
 7 promptly notify -- and I'm referring to paragraph  
 8 9 (e) -- that you promptly notify the transferee,  
 9 Macomb, of any emergency or other change in the  
 10 normal course relating to the property. Did you  
 11 notify Macomb about any change in the normal  
 12 course of 1368?  
 13 A. This is long after 1368. This is after the work  
 14 on 1368 was done, so this doesn't cover that.  
 15 Q. So did you notify Macomb that there had been a  
 16 change in the normal course as to 1368?  
 17 MR. FAISON: Just a minute. Is the  
 18 question whether he did within the period of the  
 19 due diligence?  
 20 MS. BADALAMENTI: Sure.  
 21 BY MS. BADALAMENTI:  
 22 Q. In the period of due diligence, did you notify  
 23 Macomb that there had been a change in the way  
 24 that Amendment 2 to 1368 was awarded or anything  
 25 else about the normal course of --

Page 101

1 A. No, because that contract had been closed out by  
2 the time this was executed. This doesn't cover  
3 anything under that. This deals with events going  
4 from the date it was executed going forward. So  
5 that wouldn't cover anything under 1368 because  
6 that contract had already been completed and  
7 closed out.

8 Q. Did you have a discussion with Mark Jacobs or  
9 anybody else about crafting the language in a way  
10 that would only relate to things going forward as  
11 opposed to things going back?

12 A. This -- this language was worked out by myself,  
13 Mark Jacobs, Craig Hupp and Joe Colaianne. This  
14 is not just my language. This was a collaborative  
15 effort by Macomb County's lawyers and Oakland  
16 County's lawyers.

17 Q. Did you walk through the terms of the acquisition  
18 agreement with Mark Jacobs before it was executed  
19 by Mr. Latimer?

20 A. Yes. Mark and I were both in the negotiation  
21 team.

22 Q. And you knew that the document would contain the  
23 definition of Detroit's knowledge, and that would  
24 include you?

25 A. Yes.

Page 102

1 Q. With respect to the Letter of Intent, my last  
2 question, is respect to paragraph 9(f). It  
3 indicates that you will in the due diligence  
4 period promptly notify the transferee, Macomb, of  
5 any governmental, regulatory or third party  
6 complaints, claims, investigations or hearings.  
7 Other than what you've told me about, did you  
8 notify Macomb about any complaints, claims,  
9 investigations or hearings?

10 A. No.

11 MS. BADALAMENTI: That's it.

12 THE WITNESS: Thank you.

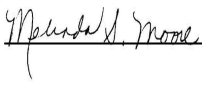
13 MR. FAISON: Thank you.

14 (The deposition was concluded at 1:02 p.m.  
15 Signature of the witness was not requested by  
16 counsel for the respective parties hereto.)

17  
18  
19  
20  
21  
22  
23  
24  
25

Page 103

1 CERTIFICATE OF NOTARY  
2 STATE OF MICHIGAN )  
3 ) SS  
4 COUNTY OF MACOMB )  
5  
6 I, MELINDA S. MOORE, certify that this  
7 deposition was taken before me on the date  
8 hereinbefore set forth; that the foregoing  
9 questions and answers were recorded by me  
10 stenographically and reduced to computer  
11 transcription; that this is a true, full and  
12 correct transcript of my stenographic notes so  
13 taken; and that I am not related to, nor of  
14 counsel to, either party nor interested in the  
15 event of this cause.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



MELINDA S. MOORE, CSR-2258  
Notary Public,  
Macomb County, Michigan  
My Commission expires: September 6, 2016